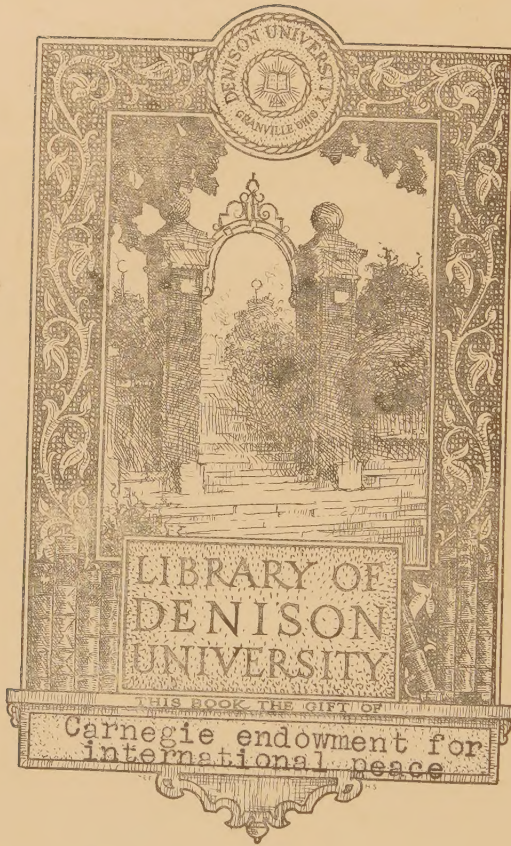


WITHDRAWN



RESOLUTIONS
OF THE
INSTITUTE OF
INTERNATIONAL LAW

Carnegie Endowment for International Peace
DIVISION OF INTERNATIONAL LAW

RESOLUTIONS
OF THE
INSTITUTE OF
INTERNATIONAL LAW
DEALING WITH THE LAW OF NATIONS

WITH AN HISTORICAL INTRODUCTION
AND EXPLANATORY NOTES

COLLECTED AND TRANSLATED UNDER THE SUPERVISION OF
AND EDITED BY

JAMES BROWN SCOTT
DIRECTOR

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WASHINGTON, D. C.

PREFACE

For some years past it has been difficult to obtain copies of the *Annuaire* of the Institute of International Law, because only a relatively small number was issued; and the volumes, being valuable to students and practitioners of international law, have long since disappeared from the market. To cite a concrete instance, the Carnegie Endowment for International Peace has tried and tried in vain to acquire by purchase several numbers of the *Annuaire* in order to complete its set, and, although it placed orders with responsible dealers five years ago, it has not yet been able to procure the volumes. As this experience might be matched by the experience of libraries and of persons interested in international law, it has been decided to reproduce in handy and convenient form the resolutions of the Institute of International Law dealing with international law which it has framed and adopted during the forty years of its successful and beneficent existence since its organization in 1873. The members of the Institute themselves have felt the need of reissuing the *Annuaire*, and on two occasions, namely, in 1894 and in 1904, published collections of the resolutions: the first dealing with those from the organization until 1894, and the latter containing the resolutions for the following decade. The *Tableau Général*, issued in 1894, forms a separate volume; the *Tableau Décennal* forms the last part of the *Annuaire* for 1904.

It has been stated that the resolutions of the Institute are of great service to students and practitioners of international law, so that their collection and publication in a convenient volume would be in the nature of a public service. In justification of this remark, an examination of almost any treatise on international law published since the organization of the Institute would show the dependence of teachers and students upon its resolutions. But men of affairs, too, have referred to the resolutions and have accepted them as authority and pressed their acceptance upon foreign governments in international controversies. From many examples, one will suffice. In the correspondence with Guatemala concerning the expulsion of Mr.

Hollander, an American citizen, Mr. Richard Olney, then Secretary of State of the United States, quoted and relied upon the resolutions of the Institute of International Law concerning the right of a government to expel aliens from its midst and the conditions to which such expulsion should be subjected.¹

In international arbitrations, the resolutions of the Institute have been invoked and relied upon by arbitrators in reaching decisions and have been quoted extensively as authorities in their awards. A single instance of this must suffice; and in view of the many, the award of Ralston, umpire, in the Buffolo case, may be cited, in which that distinguished jurist based his judgment upon the resolutions of the Institute of International Law.²

But it is not alone in treatises on international law, in the diplomatic correspondence of nations, and in the adjustment of controversies by arbitration that the resolutions of the Institute have been used as authorities. A distinguished American statesman, whom President Roosevelt considered to be the ablest man in public life in this or any other country, has repeatedly referred to the resolutions of the Institute as furnishing the framework of various conventions of the First and Second Hague Peace Conferences. And of these many references one alone can be quoted, to the effect that "in practice the work of the unofficial members of the Institute of International Law has made possible the success of the official conferences at The Hague, by preparing their work beforehand and agreeing upon conclusions which the official conferences could accept." This quotation has been taken purposely from Mr. Root's address on Francis Lieber,³ delivered before the American Society of International Law in 1913, because in this address, from which the other quotations in this preface are likewise taken, Mr. Root shows that the proposal to establish the Institute was due to the distinguished German publicist whose liberal sentiments exiled him from the land of his birth, but made him a welcome guest in the United States, of which he became a citizen by naturalization, and whose abilities and achievements reflect credit upon both countries. In a letter written

¹ Mr. Olney, Secretary of State, to Mr. Young, Minister to Guatemala, January 30, 1896, *Foreign Relations of the United States*, 1895, pt. ii, p. 775; Moore's *International Law Digest*, vol. 4, p. 102 *et seq.*

² Ralston, *Venezuelan Arbitrations of 1903*, p. 696.

³ *American Journal of International Law*, 1913, vol. 7, pp. 453, 464-5.

on April 16, 1866, to his friend Bluntschli, then professor of international law at Heidelberg, Dr. Lieber said:

For a long time it was a favorite project of mine that four or five of the most distinguished jurists should hold a congress in order to decide on several important but still unsettled questions of national equity, and perhaps draw up a code. First I proposed that it should be an official congress, under the government . . . But after awhile it became clear to me that it would be much better if a private congress were established, whose work would stand as an authority by its excellence, truthfulness, justice, and superiority in every respect.¹

And again in a letter dated December 15, 1866, to our distinguished countryman, Andrew D. White, he wrote:

I fancy sometimes—but only fancy—how fine a thing it would be for one of the Peabodies, or some such gold vessel, to give, say twenty-five thousand dollars gold, for the holding of a private—*i.e.* not diplomatic, although international—congress of some eight or ten jurists, to concentrate international authority and combined weight on certain great points, on which we have now only individual authorities. I have spoken about this years ago to Mr. Field.²

A little later, in a letter of May 7, 1869, to Judge Thayer, he said:

The strength, authority, and grandeur of the law of nations rests on, and consists in, the very fact that reason, justice, equity, speak through men “greater than he who takes a city”—single men, plain Grotius; and that nations, and even Congresses of Vienna, cannot avoid hearing, acknowledging, and quoting them. But it has ever been, and is still, a favorite idea of mine that there should be a congress of from five to ten acknowledged jurists to settle a dozen or two of important yet unsettled points—a private and boldly self-appointed congress, whose whole authority should rest on the inherent truth and energy of their own *proclama*.³

The idea was what might be called an obsession with this distinguished publicist, but it was destined to take definite form and shape. In a letter of April 10, 1872, to General Dufour, of Switzerland, Lieber wrote:

¹ *The Life and Letters of Francis Lieber* (Perry, ed.), p. 362.

² *Ibid.*, p. 367.

³ *Ibid.*, p. 391.

One of far the most effectual and beneficent things that, at this very juncture, could be done for the promotion of the intercourse of nations in peace or war (and there is *intercourse* in war, since man cannot meet man without intercourse)—one of the most promising things in matters of internationalism, would be the meeting of the most prominent jurists of the law of nations, of our Ciscaucasian race—one from each country, in their individual and not in any public capacity—to settle among themselves certain great questions of the law of nations as yet unsettled, such as neutrality, or the aid of barbarians, or the duration of the claims or obligations of citizenship. I mean *settle* as Grotius *settled*,—by the strength of the great argument of justice. A code or proclamation, as it were, of such a body, would soon acquire far greater authority than the book of the greatest single jurist. I hope such a meeting may be brought about in 1874.¹

It was brought about a year earlier, but the great and good man had passed away, as so often happens in this world of ours, before his idea had taken visible form and shape. His leadership, however, in the matter is recognized. Thus his friend Bluntschli wrote:

Lieber had great influence, I may add, in founding the *Institut de Droit International*, which was started in Ghent, in 1873, and forms a permanent alliance of leading international jurists from all civilized nations, for the purpose of working harmoniously together, and thus serving as an organ for the legal consciousness of the civilized world. Lieber was the first to propose and to encourage the idea of professional jurists of all nations thus coming together for consultation, and seeking to establish a common understanding. From this impulse proceeded Rolin-Jaequemyns' circular letter, drawn up in Ghent, calling together a number of men eminent for their learning. This latter proposal to found a *permanent academy for international law* met with general acceptance, but this was merely a further development of the original idea of Lieber, which was at the bottom of the whole scheme.²

Reverting to Mr. Root's statements as to the relation between the Institute of International Law and the work of the Hague Conferences, no better example could be quoted than the code of arbitral procedure drafted by the distinguished German publicist, Professor Goldschmidt, in 1873, and adopted with sundry amendments in 1875,

¹ *The Life and Letters of Francis Lieber* (Perry, ed.), p. 423.

² *The miscellaneous writings of Francis Lieber* (Gilman, ed.), vol. ii, p. 14.

which served as a basis of discussion for the code of arbitral procedure adopted by the First Hague Conference in 1899. One more reference must suffice. Even a hurried and cursory examination of the reports of the Hague Conferences explaining and interpreting the different conventions shows the influence of the Institute upon the deliberations of this august international assembly. Reference is made, without quoting, to the reports on the questions of the opening of hostilities, contraband of war, automatic submarine contact mines, inviolability of correspondence, and very especially to the report of the most distinguished of all international reporters, on the convention relative to the creation of an international prize court, which it is hardly necessary to say was prepared by Louis Renault. In this masterly report, at once a model and a monument, Professor Renault said:

The Institute of International Law has studied the question for a long time. In 1875, at the session held at The Hague, it appointed a committee to study a project for the organization of an international prize tribunal; but it was not until 1887 that it adopted its international regulations on maritime prizes. So far as jurisdiction is concerned, the principle laid down was that "the organization of prize tribunals of first instance remains regulated by the legislation of each State. . . ." ¹

In view of the respect which the resolutions of this unofficial body of devoted jurists has already won in the world of affairs, as well as in the realm of thought, it is a matter of congratulation to the Trustees of the Carnegie Endowment, and a guaranty of the usefulness and the practical character of its plans, that the Institute of International Law has consented to act as adviser to the Endowment's Division of International Law, and has appointed a Consultative Committee for this purpose, composed of the following distinguished publicists: Gregers W. W. Gram (Norway), Francis Hagerup (Norway), H. Harburger (Germany), Thomas Erskine Holland (Great Britain), Heinrich Lammasch (Austria), Charles Edouard Lardy (Switzerland), Louis Renault (France), Albéric Rolin (Belgium), Milenko R. Vesnitch (Serbia).

The motto of the Institute is *Justitia et Pace*, and it is to be

¹ *The Reports to the Hague Conferences of 1899 and 1907* (Oxford, 1916), p. 761.

hoped that, by the coöperation of two such institutions, the cause of justice, which is also the cause of peace, may be advanced.

It is therefore a very great pleasure, and a very great honor, to be able to make the first collection of the resolutions of the Institute dealing with international law and to offer them in an English translation to the reading public. It is often difficult to draw the line between a resolution dealing with international law and one dealing with the conflict of laws, or, to use the European expression, with private international law. Still, it is necessary to draw the line; and in so doing care has been taken to include resolutions of great international interest which would perhaps have difficulty in making good their claim to be considered as international public law.

There are also certain documents which could not, for one reason or another, be included among the resolutions, but which are nevertheless so germane and important that they should not be omitted. They are therefore printed in the appendix. Special reference is made to the original project and report and the supplemental observations of Dr. Goldschmidt concerning international arbitral procedure, Mr. Fauchille's project of a convention dealing with aircraft, and likewise Dr. von Bar's project on the same subject.

The translations are the work of many hands. Some of the documents had been translated in whole or in part a number of times, and in such cases they have been compared with the originals and revised whenever it seemed necessary or advisable. Most of the translations, however, were made especially for this volume. The word *ressortissants* is often retained, as opinions differ as to the exact nature and meaning of the word.¹

JAMES BROWN SCOTT,

Director of the Division of International Law.

WASHINGTON, D. C.

April 15, 1916.

¹ Colonel Borel, a *rapporteur* of the Second Hague Peace Conference, said that "the word *ressortissants* seems clearly to refer only to persons belonging to a state by virtue of the juridical tie of nationality" (*Actes et documents*, vol. i, p. 151). The late Professor Westlake, on the contrary, said that the term "includes persons, if any, over whom jurisdiction is claimed by reason of domicile as well as proper subjects or nationals" (*International Law*, 2d ed., part i, p. 193).

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HISTORICAL INTRODUCTION¹

We may marvel that in our century of associations there has not already existed for a long time one or more societies for the study of international law. This delay however is easily understood when we consider, first, the little attention given until recently to the science of the law of nations in comparison with other branches of law, and secondly, the essentially cosmopolitan character of this science, involving the necessity of going far afield in search of the experts, and of bringing together from great distances Americans, Englishmen, Russians, Austrians, Italians, French and Germans in spite not only of their differences in language and customs but especially their political divisions and national prejudices, by surmounting, in short, a great number of physical difficulties.

When an idea is decidedly good it makes its way and ends in realization despite obstacles. The very fact of surmounting obstacles is a test of good quality. This idea has proved victorious and its timeliness was manifested by the keen desire to see it finally realized that arose spontaneously and almost simultaneously, from 1867 to 1871, in Berlin, New York, Geneva, Ghent and Kharkov. In September, 1871, Mr. Lieber, the eminent jurist whom Lincoln directed to prepare his celebrated war articles, wrote to Mr. Rolin-Jaequemyns:

It has long been a favorite idea of mine that some of the foremost international jurists should hold a Congress, *not official*, but boldly public and international, . . . a sort of juridical œcumenic council, without pope and without infallibility. One, perhaps more, have smiled at the idea; I still hold fast to it. . . Ghent would be a capital place for it. I leave it to you how to mention this, either now *or when I am gone*, in a note or in the text; but whenever or howsoever you do it, I beg you to give it as a favorite idea of mine, held for many years. . . My Congress and its labors would be nothing more but one of the natural developments of our united progress on the broad road of our Ciscaucasian culture.

¹ Translated from the *Tableau général*, p. 1. The necessary additions to bring this historical introduction down to date are printed in italics within brackets.

Almost at the same moment [says Mr. Rolin]¹ when Mr. Lieber wrote me, Mr. Moynier, president of the International Committee of the Red Cross, told a mutual friend at Geneva to talk over a similar project with me. In November, 1872, Mr. Moynier took the trouble to come himself to Ghent to confer with me. Other jurists or statesmen of different countries, among whom were Messrs. Bluntschli, von Holtzendorff, Carlos Calvo, Drouyn de Lhuys, de Parieu and Katchénovsky, the eminent professor of Kharkov, kindly added their encouragement. Mr. Bluntschli wrote me: "The idea of a conference of jurists of international law has often received my attention also and I am very desirous of seeing the statement of the propositions that you promise me. Meanwhile I permit myself to communicate to you the form that the idea has provisionally taken with me: *The main point seems to me to be to create a permanent and durable institution which can and should by insensible degrees become an authority for the world. . .*" Mr. Bluntschli then set forth with his characteristic precision the plan of an institute or academy of international law which has served as a basis for our discussions and later correspondence.

In March, 1873, Mr. Rolin took the decisive step by sending to a certain number of competent persons a confidential note in which he described his project. The writer of the note calls attention "to the necessity, the possibility and the timeliness of giving form and life, alongside of diplomatic action and individual scientific action, to a new and third factor of international law, to wit, scientific collective action." I extract therefrom a few passages:

The idea of meeting and forming associations not only to increase, facilitate and improve *material production*, but also to stimulate *intellectual forces*, to give them a center, a support, to assure them encouragement, to initiate investigations, to add to the authority of worthy proposals, to demonstrate the worthlessness or danger of others, etc., is an essentially modern idea. In all civilized countries we see flourishing, with or without government support, societies, institutions and academies having for their end the development of some one branch of human knowledge. More recently the improvement in communication has facilitated the holding of periodical congresses where men devoted to the study of a particular science may profit by the

¹ *Revue de droit international*, vol. v, p. 481, in the very important article entitled: *De la nécessité d'organiser une institution scientifique permanente pour favoriser l'étude et les progrès du droit international*.

advantages derived from personal first-hand exchange of ideas. Political and social economy, law, history, medicine, the exact sciences, and the natural sciences have thus their collective representation, either temporary or permanent. Some of these meetings have already assumed an international character. . . .

Doubtless it would be exaggerating singularly the rôle and importance of these meetings to expect from them a great number of new ideas, of actual advances for science. Their mission seems to be to popularize rather than to create. It is even with some justice that certain of them have been reproached with allowing themselves to be invaded by pretentious mediocrities, or with spending their energies to advance theories more brilliant than substantial, or with scattering their attention over a poorly defined program instead of concentrating it upon a few essential questions. Accordingly we propose neither to imitate their organization nor to seek their immediate popularity. In international law it is especially important, if we wish to accomplish serious and lasting work, not to yield to the allurements of imagination nor to the illusion of a phrase. The darker and the more faintly traced the path, the more necessary it is to appeal for guidance there to all the lights of reason and especially of firm good sense. Have we not seen at Lausanne, under the name of *Congress of peace and liberty*, meetings whose very title appears laughable to whoever calmly peruses the report of their debates? We are far from comparing to these assemblies, which are utterly sterile, the brilliant and generous gatherings of the *Congresses of peace* held on different occasions since 1842 at London, Paris, Brussels and Frankfort. Nevertheless, we believe the time has come to accomplish something more exact than *vœux* in general terms and denunciations of war. What would be necessary to-day and what we are about to propose would be the intimate meeting of a *select* group of men already known in the science of international law through their writings or their deeds and belonging, so far as possible, to many different countries. This meeting would attempt to fix the first landmarks of collective scientific action, first, by studying out in principle a system of usefulness, examining its effectiveness and devising the best form to be given it; secondly, by adopting the constitution of an academy or international institute of the law of nations.

The Institute should, according to Mr. Rolin, serve as an organ for the legal opinion of the civilized world on the subject of international law.

It is by having constantly this aim that the members collectively should seek to promote by all means in their power the knowledge, diffusion and development of the law of nations. By a natural reciprocity the Institute, independent of any official tie, would not show itself in any way as trespassing on the province of governments. The latter would avail themselves of its learning only if they deemed it opportune and advisable. The opinions expressed and the principles stated would not pretend to have more than a simple moral authority.

What would be the nature of the works of the Institute? In the first place it would necessarily include the study of the principles of international law. We may ask if it would not be necessary to go further and write at the head of its program the *codification* of international law. This would be a question for settlement. . . . What is certain is that if that undertaking can be assumed with advantage the creation of the Institute would singularly well facilitate it. . . .

There is another task, concrete and accidental, to which the Institute might apply itself when circumstances permit and justify. This will be to study and elucidate the questions of international law whose solution is rendered necessary by current events. No doubt a great number of these questions contain the obscuring factor of political interest. Nevertheless the most complex have their legal side, which we may hope to throw light upon.¹

The confidential note was favorably received. Soon afterwards the persons who had contributed their advice as well as a small number of other notables of Europe and America were invited to Ghent, the residence of Mr. Rolin, to confer upon the project that had been communicated to them and to found the Institute of International Law.

Eleven of those who were invited accepted and became the founding members of the Institute; these were Messrs. Asser, of Amsterdam; Besobrasof, of St. Petersburg; Bluntschli, of Heidelberg; Calvo, of Buenos Aires; Field, of New York; de Laveleye, of Liège; Lorimer, of Edinburgh; Mancini, of Rome; Moynier, of Geneva; Pierantoni, of Rome; Rolin-Jaequemyns, of Ghent.

Twenty-three others could not come to the meeting but adhered to the project with or without condition and were declared to be members of the Institute from its foundation. Three others who

¹ Article cited: *De la nécessité*, etc., pp. 465, 486-488.

had not been invited were elected members by the eleven founders in session at Ghent in 1873. These twenty-six members, coworkers with the eleven founders from the very first, are, in order of countries: Messrs. Ahrens, von Bulmerincq, Goldschmidt, Heffter, von Holtzendorff, for Germany; L. von Stein, for Austria; Laurent, for Belgium; de Landa, for Spain; Lawrence, Wharton, Washburn, Woolsey, for the United States; Cauchy, Drouyn de Lhuys, Hautefeuille, Lucas, Massé, de Parieu, Vergé, for France; Bernard, Westlake, for Great Britain; Esperson, Sclopis, Vidari, for Italy; Naumann, Olivecrona, for Sweden.

The Institute has thus far held [*twenty-eight*] sessions:

1, Ghent, 1873; 2, Geneva, 1874; 3, The Hague, 1875; 4, Zürich, 1877; 5, Paris, 1878; 6, Brussels, 1879; 7, Oxford, 1880; 8, Turin, 1882; 9, Munich, 1883; 10, Brussels, 1885; 11, Heidelberg, 1887; 12, Lausanne, 1888; 13, Hamburg, 1891; 14, Geneva, 1892; [15, Paris, 1894; 16, Cambridge, 1895; 17, Venice, 1896; 18, Copenhagen, 1897; 19, The Hague, 1898; 20, Neuchâtel, 1900; 21, Brussels, 1902; 22, Edinburgh, 1904; 23, Ghent, 1906; 24, Florence, 1908; 25, Paris, 1910; 26, Madrid, 1911; 27, Christiania, 1912; 28, Oxford, 1913].

The official seat of the Institute, in conformity with Article 11 of the original constitution, which was not changed by the Oxford revision, was at Ghent, the residence of Mr. G. Rolin-Jaequemyns, from 1873 to 1878, the period of his first incumbency of the office of secretary general; from 1878 to 1892 at Brussels, the residence of Mr. A. Rivier and of Mr. G. Rolin-Jaequemyns while he was secretary general for the second time.

Since the month of September, 1892, it has been at Lausanne, the residence of the present secretary general, Mr. Ernest Lehr. [*Mr. Lehr was succeeded as secretary general by Baron Descamps in 1902, who was in turn succeeded in that office in 1906 by Mr. Albéric Rolin, the present incumbent, then of Ghent, but now of The Hague. The seat of the Institute has been accordingly at Louvain, Ghent and The Hague, the places of residence of the secretaries general.*]

CONSTITUTION OF THE INSTITUTE ¹

ARTICLE 1

The Institute of International Law is an exclusively scientific association without official character.

Its object is to aid the growth of international law:

1. By endeavoring to state the general principles of the science in such a way as to satisfy the sense of justice of the civilized world;

2. By giving assistance to every serious attempt at the gradual and progressive codification of international law;

3. By advocating the official acceptance of those principles that have been recognized as being in harmony with the needs of modern societies;

4. By contributing, within the limits of its competence, both to the maintenance of peace and to the observance of the laws of war;

5. By examining the difficulties which may arise in the interpretation or application of the law and by giving expression, where needful, to reasoned legal opinions in doubtful or controverted cases;

6. By assisting, through publications, public instruction and all other means, in the triumph of those principles of justice and humanity which should govern the relations between peoples.

ARTICLE 2

Not more than one session of the Institute can be held in each year; the interval between two sessions cannot exceed two years.

In each session the Institute selects the place and time for the following session.

This selection may be referred to the Bureau.²

ARTICLE 3

The Institute is composed of *members*, *associates* and *honorary members*.

¹ Revised Constitution, voted at Paris April 2, 1910, completed at Oxford. *Annuaire*, vol. 26, p. 1.

² The Constitution of 1900 created a body called the Council, which was charged with many of the duties now performed by the Bureau. The Council was abolished by the present Constitution.

ARTICLE 4

The Institute chooses its *members* from among the associates.

The total number of members cannot exceed sixty, but need not reach that figure.

ARTICLE 5

The *associates* are chosen by the members from among the men of different nations who have rendered services to international law in the domain of theory or that of practice.

They have the right to vote at the meetings except on questions concerning the constitution and by-laws, election, or finances of the Institute.

The total number of associates cannot exceed sixty, but need not reach that figure.

ARTICLE 6

There cannot be assigned, by new election, to the citizens of the same State or confederation of States a proportion of places as members exceeding one-fifth of the total number of members immediately after such election.

The same proportion shall be observed for associates.

When a person may claim more than one nationality it is his *present* active nationality which is to be taken.

ARTICLE 7

The title of *honorary member* may be conferred:

On members or associates;

On any persons who have distinguished themselves in the domain of international law.

Honorary members enjoy all the rights and prerogatives of full members.

ARTICLE 8

The members, in concert with the associates, in each State may constitute committees composed of persons devoted to the study of the social and political sciences in order to further the efforts of the Institute among their compatriots.

ARTICLE 9

At the end of each session the election of a president and a vice president for the following session takes place.

They together with the secretary general form the **Bureau** of the Institute in the interval between sessions.

Two other vice presidents are elected at the beginning of each session and remain in office until the following first of January, with the president and vice president forming the **Bureau**.

ARTICLE 10

In the interval between sessions and in the absence of contrary provisions of the constitution the *Bureau* dispatches all business of an administrative or urgent character.

ARTICLE 11

The secretary general is elected by the Institute for three sessions. He is eligible to immediate reelection.

He is charged with drawing up the *procès-verbaux* of each meeting, which are submitted to the approval of the Institute in the following meeting; the *procès-verbaux* which cannot be adopted by the Institute are submitted to the president for his approval.

The secretary general is also in charge of all the publications of the Institute, of current business, of the ordinary routine correspondence of the Institute and the execution of its decisions except when the Institute itself has provided otherwise. He is the custodian of the seal and of the archives. His residence is considered as the seat of the Institute. At every regular session he presents a summary of the recent labors of the Institute.

ARTICLE 12

The Institute may, on the proposal of the secretary general, name one or more secretaries or assistant secretaries to aid him in the performance of his duties or to take his place when he is temporarily absent.

ARTICLE 13

The Institute appoints for three sessions a treasurer to transact the financial business and to keep the accounts.

The treasurer presents a financial report at every ordinary session.

Two members are designated at the beginning of each session as auditors to examine the report of the treasurer. They make their report in the course of the session.

If need be, the Institute appoints a librarian, also for the term of three sessions.

ARTICLE 14

As a general rule, during the meetings of the Institute the votes on the subject of resolutions are given orally and after discussion.

Whenever there is a vote by roll-call the names of members or associates who have voted for and against or who have abstained are recorded in the *procès-verbal*.

Elections are held by ballot and only the members present are permitted to vote.

Nevertheless, for election of new members or associates those absent members are permitted to send their votes in writing under sealed cover. To be elected the candidates must obtain the majority of the votes of the members present and also the majority of all the votes legally cast.

The Bureau is obliged to present to the Institute, with its opinion in proper cases, every candidacy proposed in conformity with the constitution and the by-laws.

ARTICLE 15

As an exception and in the special cases where the Bureau unani-
mously deems it advisable, the votes of those absent may be accepted
through the channel of correspondence.

ARTICLE 16

When questions that are subjects of controversy between two or more States are under consideration, the members of the Institute belonging to these States are permitted to express and support their opinions; but they must abstain from voting.

ARTICLE 17

The Bureau appoints reporters from among the members or associates of the Institute, or constitutes from the membership of the Institute committees for the preliminary study of questions that are to be submitted to it for deliberation.

In case of urgency the secretary general himself prepares reports and conclusions.

ARTICLE 18

After each session the Institute publishes the report of its work.

ARTICLE 19

The expenses of the Institute are defrayed:

1. By the dues of full members and associates and by an entrance fee to be paid by new associates. The amount of the dues and of the entrance fee is fixed by the by-laws (session of Ghent, 1906).

The dues are payable from and including the year of election.

They carry a right to all the publications of the Institute.

A delay of three years, if not explained, in the payment of dues may be considered as equivalent to resignation;

2. By endowment and other liberalities.

Provision is made for the progressive formation of a fund the revenue from which is sufficient to pay the expenses of the secretary's office, the publications, the sessions and other regular functions of the Institute.

ARTICLE 20

This constitution shall be revised in whole or in part on the request of ten members. The request must be addressed to the Bureau with reasons in support thereof at least three months before the opening of the session.

ARTICLE 21

Every member or associate who shall have been absent from five consecutive sessions shall be considered as having resigned, unless he explains to the satisfaction of the Bureau that he has taken an active part in the work of the Institute or that he has been prevented from doing so by causes beyond his control. A registered letter of notification shall be sent him after the fourth absence by the secretary general. This provision does not apply to honorary members.

BY-LAWS OF THE INSTITUTE ¹

PART I.—PRELIMINARY WORK BETWEEN SESSIONS

ARTICLE 1

In pursuance of Article 17 of the constitution, the Bureau shall designate for each question two reporters, or one reporter and a committee for investigation and study.

In the first case, each of the reporters designated prepares a separate memoir and, if necessary, one of the two or a third reporter designated by the Bureau presents during the session an oral report on the basis of and by the aid of the preliminary memoirs. The two memoirs and the conclusions of the oral report shall at the proper time be published and distributed.

In the second case, the reporter may be assisted by a coreporter. Any member or associate expressing a desire to that end shall be entitled to membership on such committees for investigation and study as he may indicate to the secretary general.

ARTICLE 2

After the Bureau shall have designated a reporter and a committee for investigation and study, the reporter shall communicate with the members of the committee before December 31 of the year of his appointment in order to submit his ideas to them and to receive their suggestions.

ARTICLE 3

The secretary general shall acquaint himself through the reporters with the progress of the work, inform the Bureau thereof and give an account of it in his report to the Institute.

ARTICLE 4

The reporters shall in good time communicate their reports to the secretary general so that they may be published and distributed before the session at which they are to be discussed.

¹ As revised April 2, 1910. *Annuaire*, vol. 26, p. 9.

The secretary general does not have to provide for the printing or for the distribution of the other preliminary labors prepared either by the reporters or by the members of the committees. These labors shall be inserted in the *Annuaire* only in exceptional cases and in virtue of an express decision of the Institute or of the Bureau.

PART II.—THE PRESENTATION OF NEW MEMBERS OR ASSOCIATES

ARTICLE 5

Candidacies for the places of active or honorary members or of associates are presented by the Bureau under the following conditions:

1. For countries that have at least three members, they should be notified in writing to the secretary general by one of the members from the country to which the candidate belongs; this member should guarantee that the candidate would accept election, that all the members of the country have been consulted and that a majority of them have expressed themselves in favor of the candidate. He shall add the qualifications of the candidates and the names of the favorable members.

Every candidacy notified to the secretary general less than four months before the opening of the session shall be deemed to be presented too late and must be made the subject of a new proposal for the session following.

The Bureau is, on the other hand, obliged to present to the Institute, with its views if need be, every candidacy proposed in conformity with the preceding provisions (Constitution, Article 14 *in fine*);

2. For countries having fewer than three members, the candidacies are presented by the Bureau together with the opinion of the member or members already belonging to the Institute;

3. For countries not having any member, the candidacies are presented by the Bureau without restriction.

ARTICLE 6

At least one month before the opening of the session, the secretary general shall send every member a list of the candidacies with the papers in support. He adds thereto, for the use of members pre-

vented from attending the session, an invitation to send him, in two separate sealed envelopes to be delivered to the president of the Institute, two ballots bearing the name of the sender, one for the election of members, the other for that of associates (see below, Article 16; and the Constitution, Article 14, paragraph 3).

PART III.—SESSIONS

Section One.—Preliminary Work

ARTICLE 7

Not more than one session can be held in each year; the interval between two sessions cannot exceed two years.

In each session, the Institute selects the place and time for the following session. This selection may be referred to the Bureau (Constitution, Article 2). In this latter case, the secretary general shall, at least four months in advance, notify the members and associates of the place and date adopted by the Bureau.

ARTICLE 8

The program of the session shall be prepared by the Bureau and as soon as possible the secretary general shall communicate it to the members and associates. The program shall be accompanied by the succinct summary, provided by Article 3 above, of the progress of the preliminary labors as well as by any other information likely to facilitate the task of members taking part in the session.

Section Two.—Administrative Meetings

ARTICLE 9

Members (active and honorary) alone take part in the administrative sessions.

The first meeting of each session is always devoted to the administrative business.

It shall be opened by the president without an address, or in his absence by the first vice president, and in the absence of the latter, by the senior member in age.

The first vice president shall sit at the right and the secretary general at the left of the president.

ARTICLE 10

Immediately after the opening of the meeting, the secretary general shall communicate the names of the assistant secretaries or reporters designated by him to assist him in writing up the *procès-verbaux* of the session. The assistant secretaries or reporters shall act only during the session.

The secretary general shall then communicate letters from members unable to be present at the session, and this shall be followed by the roll-call.

ARTICLE 11

The president shall immediately call for the election of two vice presidents by secret ballot. He shall read aloud the names written on each ballot. Election takes place by the absolute majority of the members present.

If this majority is not reached at the second voting, balloting takes place between the persons who have obtained the largest number of votes; in case of a tie vote, preference shall be given to the oldest member.

In elections by ballot, the blank and void ballots must be counted in determining the absolute majority.

ARTICLE 12

The president shall then, if necessary, call successively for ballots to be taken to fill the offices of secretary general and secretaries or assistant secretaries, as well as of treasurer, when their terms have expired.

ARTICLE 13

The treasurer is then invited to submit the accounts of the Institute, and two auditors shall be immediately elected to examine these accounts. The auditors report during the course of the session (Article 13 of the Constitution).

ARTICLE 14

The president then calls for an exchange of views in regard to the qualifications of the candidates proposed as members or as associates.

Voting for the list takes place successively in two separate votes, one for the election of new members and the other for the election of associates.

Only candidates fulfilling the conditions determined in Articles 5 and 6 above are eligible. Ballots bearing other names are deemed to be void.

After the counting of the votes cast by the members present, the president shall read the names of the absent members who may have availed themselves of the right, conferred upon them by Article 14, paragraph 5, of the Constitution, to participate in the election of members or associates through correspondence. The president then opens the envelopes and deposits in a special urn, without reading them, the ballots sent by absent members, and then proceeds to count these ballots.

If several ballotings are necessary to bring about an election, the votes cast by the absentees are in each ballot added to the votes cast by the members present.

The president shall declare elected those who have obtained cumulatively an absolute majority of the votes of the members present and an absolute majority of the total number of votes of members present and of members absent who have taken part regularly in the election.

In case the number of those who have obtained this majority exceeds the number of places to be filled, only those who have obtained the highest number of votes are considered as elected. The elimination is effected by first reducing each nationality to the proportion that it must not exceed (Constitution, Article 6) and then the number of members and the number of associates to the limit set by the number of places to be filled. In these different operations, whenever there is a tie in the result of the voting the decision is in favor of the oldest.

The newly elected persons may take part immediately.

ARTICLE 15

If necessary the president then submits the proposals of the Bureau for the representation of the Institute in the Bluntschli foundation, and communicates the appointment that he may have personally made for the representation of the Institute in the Holtzendorff foundation.

ARTICLE 16

The president must remind those members who desire to propose to the Institute the investigation of new questions that they are in-

vited to put their communications into the hands of the Bureau at the very opening of the session. This recommendation must be renewed by the president at the opening of the plenary meetings.

ARTICLE 17

The librarian files his report on the discharge of his duties since the previous session. The president should on this occasion make reference to the *vœu* that all members will kindly enrich the library with a complete collection of their works; this *vœu* should be repeated by the president at the opening of the plenary meetings.

ARTICLE 18

The Institute acts upon the conclusions of the report made by the auditors in regard to the accounts of the treasurer.

ARTICLE 19

The Institute may act upon propositions of an administrative nature only when they have been inscribed in the program sent in advance to its members. Other propositions may only be considered and referred for examination to the Bureau; if the latter recognizes the urgency of the proposition, it may call for a new discussion in the course of the session at another meeting, and, if a majority of the members present also declares the urgency of the measure, a vote upon the principle involved may be taken in the course of this new meeting; otherwise, the proposition stands adjourned to the following session.

ARTICLE 20

Propositions tending to the modification of the constitution and formulated by more than ten members can be brought up for discussion only after they have been addressed to the Bureau, through the intermediary of the secretary general, together with reasons in support thereof, at least four months before the opening of the session (Article 22 of the Constitution). The secretary general is obliged to communicate propositions of this nature to the other members of the Bureau immediately.

Section Three.—Plenary Meetings

ARTICLE 21

Plenary meetings, in which the members and associates of the Institute participate, are preceded by a purely formal meeting, the program of which is prepared between the Bureau and the authorities of the country where the Institute meets. No discussion takes place in the course of this purely formal meeting, which shall be exclusively devoted to the reception of the Institute by the local authorities and to the report of the secretary general on the progress of the labors of the Institute.

ARTICLE 22

Plenary meetings shall be devoted to the scientific labors.

The members and associates participate therein on a footing of complete equality, both having the right to discuss and vote.

The meetings are not public; the Bureau however may admit the local authorities and the local press, as also distinguished persons who request the privilege of attending.

ARTICLE 23

Every meeting shall be opened with the reading of the *procès-verbaux* of the preceding meeting. A special *procès-verbal* shall be made for each meeting, even when several meetings take place on the same day, but the *procès-verbal* of the morning meetings is read only at the opening of the meeting on the following day.

The Institute approves or modifies the *procès-verbal*. Corrections may be requested only with regard to questions of form, and errors or omissions; a resolution of the Institute may not be modified on the occasion of the reading of the *procès-verbal*.

The *procès-verbal* of the last meeting of a session is approved by the president (Constitution, Article 11).

ARTICLE 24

The president, after consultation with the Bureau and reporters, determines the order in which the business shall be taken up; but the Institute can always modify the order indicated by the president.

He sets aside the time necessary for the labors of the committees.

ARTICLE 25

For each question on the program the reporters shall in turn take their places at the left of the Bureau.

The propositions of the reporters shall form the basis of the discussion.

The members of the committees have the right to complete and develop their personal opinions.

ARTICLE 26

The discussion shall then be opened.

It takes place in the French language with such exceptions as the president deems opportune.

ARTICLE 27

No one shall take the floor without having obtained it from the president.

The president should write down the names of members or associates as they request the floor and grant it to each of them in his order on the list.

The reporters, however, are not subject to taking their turn on the list, but may obtain the floor after requesting it from the president.

ARTICLE 28

If the president wishes to take the floor as a member of the Institute, the vice president shall occupy the chair.

ARTICLE 29

Reading of an address is prohibited except by special authorization from the president.

ARTICLE 30

If a speaker departs too far from the question under discussion, the president should call him to order.

ARTICLE 31

All propositions or amendments should be transmitted to the president in writing.

ARTICLE 32

If during discussion a question of order is raised, the main discussion shall be interrupted until the assembly shall have acted upon the question of order.

ARTICLE 33

A motion to bring the discussion to a close may be presented. Such a motion can be adopted only by a two-thirds majority of the assembly.

If no one requests the floor, or if a motion to close the discussion is adopted, the president declares the debate closed; from this moment the floor may not be granted to any one, except in special cases to the reporter.

ARTICLE 34

Before proceeding to the voting, the president shall submit to the assembly the order in which the questions will be put to vote.

If there is objection, the assembly shall decide immediately.

ARTICLE 35

Amendments to amendments are put to vote before amendments, and the latter before the main proposition. Motions to reject, pure and simple, are not considered as amendments.

When there are more than two principal coördinate propositions, they are all put to vote one after another; and each member of the assembly may vote for one of them. When all propositions shall thus have been voted upon, if none of them has received a majority, the assembly decides, by a new ballot, which of the two propositions with the fewest votes shall be eliminated. Then the remaining propositions are voted upon as against one another until one of them, left alone for consideration, may become the object of a final vote.

ARTICLE 36

The adoption of an amendment to an amendment carries no obligation to vote for the amendment itself; nor does the adoption of an amendment mean a vote in favor of the main proposition.

ARTICLE 37

When a proposition is divisible, anyone may demand a division of it before the vote.

ARTICLE 38

When the proposition under discussion is drafted in several articles, a general discussion of the whole proposition shall first take place.

After discussion and voting upon the articles, a vote on the entire proposition shall be taken. This vote may be postponed by the assembly to a subsequent meeting.

ARTICLE 39

Voting shall take place by raising the hand.

No one is obliged to vote. If part of the persons present abstain, it is the majority of those voting that decides.

In case of a tie vote, the proposition is considered as rejected.

ARTICLE 40

Voting must take place by roll-call if five persons so request. Voting by roll-call is always necessary on an entire proposition of a scientific nature.

The *procès-verbal* mentions the names of members and associates voting *for* or voting *against* and of those abstaining (Constitution, Article 14).

ARTICLE 41

The president votes last.

ARTICLE 42

The Institute may decide upon a second discussion, to take place either in the current session, or at the following session, or it may refer its decisions to a drafting committee to be appointed by the Institute itself or by the Bureau.

ARTICLE 43

Articles 23 to 42 are applicable to discussions in administrative meetings. Articles 9, last paragraph, 18 and 19 *in fine*, are likewise applicable to the discussions of the plenary meetings.

ADDITIONAL PROVISIONS

The Institute has made some new provisions, particularly with

respect to dues, the Nobel Prize and financial business, by giving them the character of by-laws but without inserting them in the report of the administrative meetings.¹

¹ It appears from the *Annuaire* for 1906, pp. 228 and 229, that the dues of full members and of associates were fixed at the uniform annual amount of 20 francs and that every newly elected associate is obliged to pay an entrance fee of 50 francs.

MEMBERS AND ASSOCIATES, PAST AND PRESENT, OF THE INSTITUTE OF INTERNATIONAL LAW

- Ahrens, Heinrich. Germany. Member 1873-4.
- Alcorta, Amancio M. Argentine Republic. Associate 1891-1902.
- Alhucemas, Manuel Garcia Prieto, *marqués* de. Spain. Honorary member 1911—.
- Alin, Oscar Josef. Sweden. Associate 1896-1900.
- Alvarez, Alejandro. Chile. Associate 1913—.
- Alverstone, Richard Everard Webster, *viscount*. Great Britain. Associate 1902-4; member 1904-15.
- Anzilotti, Dionisio. Italy. Associate 1908—.
- Ardagh, *Sir* John. Great Britain. Associate 1904-7.
- Arntz, Egide Rodolphe Nicolas. Belgium. Member 1877-84.
- Aschehoug, Torkel Halvorsen. Sweden and Norway. Member 1874-94.
- Asser, Charles Daniel. Netherlands. Associate 1894—.
- Asser, Tobias Michael Carel. Netherlands. Member 1873-1906; honorary member 1906-13.
- Aubert, Ludvig Mariboe Benjamin. Sweden and Norway. Associate 1879-92; member 1892-6.
- Azcárate, Gumersindo de. Spain. Associate 1911—.
- Baker, *Sir* George Sherston, *bart*. Great Britain. Associate 1879—.
- Banning, Emile Théodore Joseph Hubert. Belgium. Associate 1892-8.
- Bar, Karl Ludwig von. Germany. Member 1874-1906; honorary member 1906-13.
- Barclay, *Sir* Thomas. Great Britain. Associate 1885-91; member 1891—.
- Bartholony, Jean François. Switzerland. Honorary member 1873-81.
- Beauchet, Marie François Ludovic. France. Associate 1892-1908; member 1908—.

- Beer Poortugael, Jacobus Catharinus Cornelis den. Netherlands. Associate 1874-88; member 1888-1912; honorary member 1912-3.
- Beernaert, Auguste M. J. Belgium. Honorary member 1906-12.
- Beichmann, Frederik Vlademar Nicolai. Norway. Associate 1910—.
- Beirão, Francisco Antonio da Veiga. Portugal. Associate 1891-6; member 1896—.
- Bergbohm, Carl. Russia. Associate 1885-98.
- Bernard, Mountague. Great Britain. Member 1873-82.
- Berney, Jacques. Switzerland. Associate 1897-8.
- Besobrasof, Vladimir. Russia. Member 1873-89.
- Blociszewski, Josef de. France. Associate 1912—.
- Bluntschli, Johann Caspar. Germany. Member 1873-81.
- Boeck, Jean Barthélemy Charles de. France. Associate 1910—.
- Boehm, Ferdinand. Germany. Associate 1894-1901.
- Boiceau, Charles Marc Samson. Switzerland. Associate 1895-1907.
- Bourgeois, Léon Victor Auguste. France. Honorary member 1908—.
- Brocher, Charles Antoine. Switzerland. Associate 1874-5; member 1875-84.
- Brocher de La Fléchère, Henri. Switzerland. Associate 1877-85; member 1885-1908.
- Brusa, Emilio. Italy. Associate 1877-8; member 1878-1908.
- Bulmerincq, August von. Germany. Member 1873-90.
- Bustamante y Sirvén, Antonio Sánchez de. Cuba. Associate 1895-1910; member 1910—.
- Buzzati, Giulio Cesare. Italy. Associate 1891-8; member 1898—.
- Cahn, Wilhelm. Germany. Associate 1898—.
- Calvo, Carlos. Argentine Republic. Member 1873-95; honorary member 1895-1906.
- Canalejas y Mendez, José. Spain. Honorary member 1911-3.
- Caratheodory, Etienne. Turkey. Associate 1888-1904; member 1904-7.
- Carle, Giuseppe. Italy. Associate 1882-3.
- Carnazza Amari, Giuseppe. Italy. Associate 1882-1911.
- Catellani, Enrico L. Italy. Associate 1891-6; member 1896—.
- Cauchy, Eugène François. France. Member 1873-7.
- Chrétien, Alfred Marie Victor. France. Associate 1891—.

- Clère, Jules. France. Associate 1879—.
- Clunet, Edouard. France. Associate 1875-80; member 1880—.
- Conde y Luque, Rafael. Spain. Associate 1911—.
- Corsi, Alessandro. Italy. Associate 1898-1908; member 1908—.
- Courcel, Alphonse Chodron de, *baron*. France. Honorary member 1895—.
- Daguin, Victor Félix Fernand. France. Associate 1895—.
- Dahn, Felix Ludwig Sophus. Germany. Associate 1891-1900.
- Danevsky, Vsevolod de. Russia. Associate 1880-98.
- Darras, Alcide Hippolyte Parfait. France. Associate 1895-1908.
- Dato Iradier, Edouardo. Spain. Honorary member 1911—.
- Demangeat, Joseph Charles. France. Member 1877-96.
- Descamps, Edouard François Eugène, *baron*. Belgium. Associate 1892-1900; member 1900—.
- Desjardins, Achille Arthur. France. Associate 1891-5; member 1895-1901.
- Despagnet, Frantz Clément René. France. Associate 1891-1904; member 1904-6.
- Dicey, Albert Venn. Great Britain. Associate 1880-5; member 1885—.
- Diena, Giulio. Italy. Associate 1908-12; member 1912—.
- Dillon, John Forrest. United States. Associate 1883-91; member 1891—.
- Drouyn de Lhuys, Edouard. France. Member 1873-8.
- Dubois, Ernest. France. Associate 1875-82.
- Dupuis, Charles Alfred Marie. France. Associate 1900-10; member 1910—.
- Engelhardt, Edouard Philippe. France. Associate 1885-7; member 1887-1913; honorary member 1913—.
- Errera, Paul. Belgium. Associate 1900—.
- Esperson, Pietro. Italy. Member 1873-98.
- Eyschen, Paul. Luxemburg. Associate 1910—.
- Fauchille, Paul Auguste Joseph. France. Associate 1897-1908; member 1908—.
- Fedozzi, Prospero. Italy. Associate 1908—.
- Féraud-Giraud, Louis Joseph Delphin. France. Associate 1887-91; member 1891-8; honorary member 1898-1908.

- Ferguson, Jan Helenus. Netherlands. Associate 1888-91; member 1891-1908.
- Field, David Dudley. United States. Member 1873-87; honorary member 1887-94.
- Fiore, Pasquale. Italy. Member 1874-1910; honorary member 1910-4.
- Foote, John Alderson. Great Britain. Associate 1895-1911.
- Fromageot, Henri Auguste. France. Associate 1908—.
- Fusinato, Guido. Italy. Associate 1887-96; member 1896-1914.
- Gabba, Carlo Francesco. Italy. Associate 1882-7; member 1887—.
- Gareis, Karl. Germany. Associate 1891-1910.
- Geffcken, Friedrich Heinrich. Germany. Associate 1885-91; member 1891-6.
- Gessner, Ludwig. Germany. Associate 1875-8; member 1878-90.
- Glasson, Ernest Désiré. France. Associate 1888-95; member 1895-1907.
- Goldschmidt, Levin. Germany. Member 1873-97.
- Goos, August Herman Ferdinand Carl. Denmark. Member 1877-1911; honorary member 1911—.
- Goudy, Henry. Great Britain. Associate 1895—.
- Gram, Gregers Winther Wulfsberg. Norway. Associate 1898-1904; member 1904—.
- Grünhut, Carl Samuel. Austria-Hungary. Associate 1880-94.
- Hagerup, Georg Francis. Norway. Associate 1897-8; member 1898—.
- Hall, William Edward. Great Britain. Associate 1875-82; member 1882-94.
- Hammar skjöld, Knut Hjalmar Leonard. Sweden. Associate 1906-10; member 1910—.
- Hannen, James Henry, *baron*. Great Britain. Associate 1883-5; member 1885-94.
- Harburger, Heinrich. Germany. Associate 1883-92; member 1892-1916.
- Hart, *Sir* Robert, *bart*. Great Britain. Honorary member 1892-1911.
- Hartmann, Adolf. Germany. Associate 1887-91; member 1891-7.
- Hautefeuille, Laurent Basile. France. Member 1873-5.
- Heffter, August Wilhelm. Germany. Member 1873-80.

- Heimbürger, Karl Friedrich. Germany. Associate 1891-8; member 1898-1910.
- Hellner, Johannes. Sweden. Associate 1910—.
- Hilty, Charles. Switzerland. Associate 1891-1908.
- Holland, Thomas Erskine. Great Britain. Associate 1875-8; member 1878—.
- Holtzendorff, Franz Joachim Wilhelm Philipp von. Germany. Member 1873-89.
- Hornung, Joseph. Switzerland. Member 1878-84.
- Huber, Eugen. Switzerland. Associate 1908—.
- Hübner, Bernhard. Germany. Associate 1898-1910.
- Ivanovsky, Ignace. Russia. Associate 1895-1910.
- Jellinek, Georg. Germany. Associate 1891-8.
- Jettel von Ettenach, Emil. Austria-Hungary. Associate 1894—.
- Jitta, Josephus. Netherlands. Associate 1913—.
- Jordan, Marie Joseph Etienne Camille. France. Associate 1910—.
- Kalindero, John. Roumania. Associate 1887-9.
- Kamarovski, Leonid, *graf*. Russia. Associate 1875-91; member 1891-1912.
- Kaneko, Kentaro, *baron*. Japan. Associate 1891—.
- Kapoustine, Michel de. Russia. Member 1877-99.
- Kasperek, Franz. Austria-Hungary. Associate 1883-91; member 1891-1903.
- Kaufmann, Wilhelm. Germany. Associate 1904-1913; member 1913—.
- Kebedgy, Michel. Greece. Associate 1895-1906; member 1906—.
- Kennedy, *Sir* William Rann. Great Britain. Associate 1910-13; member 1913-5.
- Kleen, Rikard. Sweden and Norway. Associate 1891-4; member 1894—.
- Koenig, Charles Gustave. Switzerland. Associate 1875-85; member 1885-92.
- Krauel, Richard. Germany. Associate 1910—.
- Laboulaye, Edouard René Lefébure. France. Member 1878.
- Labra y Cadrana, Rafael María de. Spain. Associate 1878-87; member 1887—.
- Lainé, Jules Armand. France. Associate 1885-96; member 1896-1908.

- Lambermont, François Auguste, *baron*. Belgium. Honorary member 1892-1905.
- Lammasch, Heinrich. Austria-Hungary. Associate 1887-91; member 1891—.
- Landa y Alvarez de Carvalho, Nicasio. Spain. Member 1873-91.
- Lapradelle, Albert de. France. Associate 1910—.
- Lardy, Charles Edouard. Switzerland. Associate 1891-5; member 1895—.
- Laurent, François. Belgium. Member 1873-87.
- Laveleye, Emile Louis Victor, *baron* de. Belgium. Member 1873-92.
- Lawrence, Thomas Joseph. Great Britain. Associate 1885-1908; member 1908—.
- Lawrence, William Beach. United States. Member 1873-81.
- Leech, Henry Brougham. Great Britain. Associate 1892—.
- Leguizamon, José Faustino Onesimo. Argentine Republic. Associate 1879-87.
- Lehr, Paul Ernest. France. Associate 1879-87; member 1887-1910; honorary member 1910—.
- Le Touzé, Ch. France. Associate 1875-86.
- Liszt, Franz von. Austria-Hungary. Associate 1900-8; member 1908—.
- Loening, Edgar. Germany. Associate 1874-95.
- Lomonaco, Giovanni. Italy. Associate 1882-9.
- Lorimer, James. Great Britain. Member 1873-90.
- Louter, J. de. Netherlands. Associate 1904-13; member 1913—.
- Lucas, Charles Jean Marie. France. Member 1873-89.
- Lueder, Karl Christoph Johann Friedrich Ludwig. Germany. Member 1877-95.
- Lyon-Caen, Charles Léon. France. Associate 1880-5; member 1885—.
- Macdonell, *Sir* John. Great Britain. Associate 1900-12; member 1912—.
- Maluquer y Salvador, José. Spain. Associate 1891-1911; member 1911—.
- Mamiani della Rovere, Terenzio, *conte*. Italy. Member 1874-82; honorary member 1882-5.
- Mancini, Pasquale Stanislao. Italy. Member 1873-88.
- Mandelstam, André. Russia. Associate 1904—.

- Manzato, Renato. Italy. Associate 1896—.
- Marquardsen, Heinrich. Germany. Member 1874-97.
- Martens, Fedor Fedorovich. Russia. Member 1874-1909.
- Martens-Ferrão, João Baptista de. Portugal. Associate 1882-91; member 1891-5.
- Martin, William Alexander Parsons. United States. Associate 1882-91; member 1891—.
- Martitz, Ferdinand Karl Ludwig von. Germany. Associate 1882-91; member 1891—.
- Massé, Gabriel. France. Member 1873-81.
- Matzen, Henning. Denmark. Associate 1892-5; member 1895-1910.
- Meier, Ernst. Germany. Associate 1875-86.
- Meili, Friedrich. Switzerland. Associate 1887-1906; member 1906-14.
- Mercier, André. Switzerland. Associate 1908—.
- Mérignhac, Alexandre Giraud Jacques Antoine. France. Associate 1904—.
- Meurer, Christian. Germany. Associate 1908—.
- Meyer, Felix. Germany. Associate 1911—.
- Meyer, Georg. Germany. Associate 1891-8.
- Midosi, Henrique. Portugal. Associate 1896-1900; member 1900-4.
- Missir, P. Roumania. Associate 1904—.
- Montluc, Léon Pierre Adrien de. France. Associate 1875-85; member 1885—.
- Moore, John Bassett. United States. Associate 1891-1908; member 1908—.
- Motono, Ichiro. Japan. Associate 1904—.
- Moynier, Louis Gabriel Gustave. Switzerland. Member 1873-98; honorary member 1898-1910.
- Naumann, Christian. Sweden and Norway. Member 1873-88.
- Nérincx, Alfred. Belgium. Associate 1902—.
- Neumann, Leopold, *freiherr* von. Austria-Hungary. Member 1874-88.
- Niemeyer, Theodor. Germany. Associate 1913—.
- Noldé, Baron Boris. Russia. Associate 1912—.
- Norsa, César. Italy. Associate 1875-83; member 1883-90.
- Nys, Ernest. Belgium. Associate 1882-5; member 1885—.

- Olivart, Ramón de Dalmau y de Olivart, *marqués* de. Spain. Associate 1888-1910; member 1910—.
- Olivecrona, Samuel Rudolf Detlof Knut. Sweden and Norway. Member 1873-1905.
- Olivi, Luigi. Italy. Associate 1891-1908; member 1908-11.
- Oppenheim, Lassa Francis Lawrence. Great Britain. Associate 1908-11; member 1911—.
- Orelli, Aloys von. Germany. Associate 1885-8; member 1888-92.
- Parieu, Marie Louis Pierre Félix Esquirou de. France. Member 1873-93.
- Peralta, Manuel María de. Costa Rica. Associate 1891—.
- Perels, Ferdinand Paul. Germany. Associate 1879-85; member 1885-1903.
- Petersen, Aleksis. Denmark. Associate 1875-84.
- Phillimore, *Sir* Robert Joseph, *bart.* Great Britain. Honorary member 1883-5.
- Pierantoni, Augusto. Italy. Member 1873-1906; honorary member 1906-11.
- Pillet, Antoine Louis. France. Associate 1897-1910; member 1910—.
- Pina y Millet, Ramon. Spain. Associate 1911—.
- Plener, Ernst, *edler* von. Austria-Hungary. Associate 1912—.
- Politis, Nicolas Socrate. France. Associate 1902—.
- Pollock, *Sir* Frederick. Great Britain. Associate 1885-90.
- Poulet, Prosper A. M. J. Belgium. Associate 1902—.
- Pradier-Fodéré, Paul Louis Ernest. France. Associate 1879-82; member 1882-1904.
- Prins, Adolphe. Belgium. Associate 1880-94.
- Rahusen, Edouard Nicolas. Netherlands. Honorary member 1898-1900; member 1900-10; honorary member 1910-13.
- Reay, Donald James Mackay, *baron* Reay de Reay, *lord.* Great Britain. Associate 1882-92; member 1892—.
- Renault, Jean Louis. France. Associate 1875-82; member 1882—.
- Reuterskiöld, Carl Ludvig August Axel. Sweden. Associate 1911—.
- Richards, *Sir* Henry Erle. Great Britain. Associate 1913—.
- Rivier, Alphonse Pierre Octave. Switzerland. Associate 1873-8; member 1878-98.
- Roguin, Ernest. Switzerland. Associate 1891-6; member 1896—.

- Rolin, Albéric. Belgium. Associate 1873-83; member 1883—.
- Rolin-Jaequemyns, Edouard Gustave Marie. Belgium. Associate 1891-8; member 1898—.
- Rolin-Jaequemyns, Gustave Henri Ange Hippolyte. Belgium. Member 1873-1902.
- Romero y Girón, Vicente. Spain. Associate 1891-1900.
- Root, Elihu. United States. Associate 1912—.
- Rostworowski, Michal J. C. Austria-Hungary. Associate 1898—.
- Roszkowski, Gustav, *ritter* von. Austria-Hungary. Associate 1882-91; member 1891—.
- Rouard de Card, Martial Michel Edgard. France. Associate 1895-1912; member 1912—.
- Rydin, Herman Ludvig. Sweden and Norway. Associate 1885-1900.
- Sacerdoti, Adolfo. Italy. Associate 1878-88; member 1888—.
- Saripolis, Nicolas Jean. Greece. Member 1877-87.
- Schönborn, Friedrich, *graf*. Austria-Hungary. Associate 1902-7.
- Schücking, Walther Max Adrian. Germany. Associate 1910—.
- Schulze-Gaevernitz, Herman Johann Friedrich von. Germany. Associate 1879-80; member 1880-8.
- Sclopis di Salerano, Paolo Federigo, *conte*. Italy. Member 1873-8.
- Scott, James Brown. United States. Associate 1908-10; member 1910—.
- Scott, *Sir* John. Great Britain. Associate 1891-1904.
- Seigneux, Georges de. Switzerland. Associate 1894-1912.
- Seijas, Rafael Fernando. Venezuela. Associate 1891—.
- Sela y Sampil, Aniceto. Spain. Associate 1911—.
- Sieveling, Friedrich. Germany. Associate 1892-1900; member 1900-10.
- Stein, Lorenz von. Austria. Member 1873-90.
- Steinbach, Emil. Austria-Hungary. Associate 1902-7.
- Stoerk, Felix. Germany. Associate 1888-95; member 1895-1908.
- Streit, Georgios. Greece. Associate 1898-1910; member 1910—.
- Strisower, Leo. Austria-Hungary. Associate 1891-1908; member 1908—.
- Takahashi, Sakuyei. Japan. Associate 1908—.
- Taube, Mikhail Aleksandrovich, *baron*. Russia. Associate 1910—.

- Teichmann, Albrecht. Germany. Associate 1880-94.
Terao, Toru. Japan. Associate 1900-11.
Thaller, Edmond Eugène. France. Associate 1900—.
Torres Campos, Manuel. Spain. Associate 1885-91; member 1891—.
Triepel, Heinrich. Germany. Associate 1910—.
Twiss, *Sir* Travers. Great Britain. Member 1874-91; honorary member 1891-7.
Ullmann, Emanuel, *ritter* von. Austria-Hungary. Associate 1898-1904; member 1904-13.
Vallotton, James. Switzerland. Associate 1912—.
Van der Rest, Eugène. Belgium. Associate 1885-94.
Vedel, Axel. Denmark. Associate 1912—.
Vergé, Charles Henri. France. Member 1873-5.
Vesnitch, Milenko R. Serbia. Associate 1896-8; member 1898—.
Vidari, Ercole. Italy. Member 1873-8.
Vincent, Louis Félix René. France. Associate 1892-8.
Wallace, *Sir* Donald Mackenzie. Great Britain. Associate 1878-95; member 1895—.
Washburn, Emory. United States. Member 1873-7.
Waxel, Platon L'vovich. Russia. Associate 1891—.
Weiss, Charles André. France. Associate 1887-98; member 1898—.
Westlake, John. Great Britain. Member 1873-98; honorary member 1898-1913.
Wharton, Francis. United States. Member 1873-89.
Whiteley, James Gustavus. United States. Associate 1902—.
Wiesse, Carlos. Peru. Associate 1904—.
Wilson, George Grafton. United States. Associate 1910—.
Woolsey, Theodore Dwight. United States. Member 1873-89.
Yvernès. France. Associate 1879-82.
Zeballos, Estanislao S. Argentine Republic. Associate 1908-11; member 1911—.

ARBITRAL PROCEDURE ¹

At its Geneva meeting in 1874, the Institute had deliberated at length upon a *draft of regulations for international courts of arbitration*,² carefully prepared with a statement of reasons by Mr. Goldschmidt. The discussion, which was exhaustive and thoroughly scientific, had resulted in the adoption of the draft, with a few amendments accepted by the reporter. The revision of this amended draft was entrusted to a committee charged with preparing it for the following meeting.³

Mr. Field was the president of this committee, and Mr. Rivier its reporter. The text upon which it agreed was discussed by the Institute in plenary session at The Hague, August 28, 1875, and was unanimously adopted,⁴ in the following form:

DRAFT REGULATIONS FOR INTERNATIONAL ARBITRAL PROCEDURE ⁵

The Institute, desiring that recourse to arbitration for the settlement of international disputes be resorted to more and more by civilized peoples, hopes to be of service toward the realization of such progress by proposing for arbitral tribunals the following eventual regulations. It recommends them for adoption in whole or in part to States that may conclude *compromis*.

ARTICLE 1. The *compromis* is concluded by means of a valid international treaty.

It may be:

(a) *In advance*, either for all differences or for differences of a certain kind to be determined, that may arise between the contracting States.

(b) For one difference or several differences *already arisen* between the contracting States.

ARTICLE 2. The *compromis* gives to each contracting party the right of appealing to the arbitral tribunal that it

¹ *Tableau général de l'organisation, des travaux et du personnel de l'institut de droit international* (Paris, 1893), p. 123.

² For a translation of Mr. Goldschmidt's draft, see the appendix, p. 205.

³ *Annuaire de l'institut de droit international*, vol. 1, p. 31.

⁴ *Ibid.*, pp. 45, 84.

⁵ *Ibid.*, p. 126.

designates for the decision of the dispute. In the absence of a designation of the number and the names of the arbitrators in the *compromis*, the arbitral tribunal shall settle upon this according to the provisions laid down by the *compromis* or by another convention.

In the absence of any provision, each of the contracting parties chooses on its own part an arbitrator, and the two arbitrators thus named choose a third arbitrator or designate a third person who shall select him.

If the two arbitrators named by the parties cannot agree upon the choice of a third arbitrator, or if one of the parties refuses the coöperation that it owes under the *compromis* for the formation of the arbitral tribunal, or if the person designated refuses to make a choice, the *compromis* becomes of no effect.

ARTICLE 3. If at the outset, or because they have been unable to come to an agreement upon the choice of arbitrators, the contracting parties have agreed that the arbitral tribunal should be formed by a third person designated by them, and if the designated person takes upon himself the formation of the arbitral tribunal, the steps to be followed to this end shall in the first instance be in accordance with the provisions of the *compromis*. In the absence of provisions, the designated third person may either himself name the arbitrators or propose a certain number of persons among whom each of the parties shall choose.

ARTICLE 4. Sovereigns and heads of Governments without any restriction shall be eligible to be named international arbitrators, and also all persons who have the capacity to exercise the functions of arbitrator under the common law of their country.

ARTICLE 5. If the parties have legally agreed on arbitrators individually determined, the incapacity of or a valid exception to even a single one of these arbitrators voids the entire *compromis*, unless the parties can come to an accord upon another competent arbitrator.

If the *compromis* does not carry an individual determination of the arbitrator in question, it is necessary, in

case of incapacity or valid exception, to follow the course prescribed for the original choice (Articles 2, 3).

ARTICLE 6. The declaration of acceptance of the office of arbitrator is made in writing.

ARTICLE 7. If an arbitrator refuses the arbitral office, or if he withdraws after having accepted it, or if he dies, or if he becomes insane, or if he is legally challenged by reason of incapacity under the terms of Article 4, application of the provisions of Article 5 shall be made.

ARTICLE 8. If the seat of the arbitral tribunal is not mentioned in the *compromis* or in a subsequent convention between the parties, its determination is made by the arbitrator or a majority of the arbitrators.

The arbitral tribunal is authorized to change its seat only in case the accomplishment of its functions at the place agreed upon is impossible or clearly dangerous.

ARTICLE 9. The arbitral tribunal, if composed of several members, appoints one of them as president, taken from its number, and selects one or more secretaries.

The arbitral tribunal decides in what language or languages its deliberations and the arguments of the parties shall take place, and the documents and other instruments of proof shall be presented. It keeps a record of its deliberations.

ARTICLE 10. All members shall be present at the deliberations of the arbitral tribunal. The tribunal may nevertheless delegate to one or several members or even commit to third persons certain investigations.

If the arbitrator is a State or its head, a municipal or other corporation, an authority, a faculty of law, a learned society, or the actual president of the municipal or other corporation or authority, faculty or company, all the arguments may take place with the consent of the parties before the commissioner named *ad hoc* by the arbitrator. A protocol thereof shall be drawn up.

ARTICLE 11. No arbitrator is authorized without the consent of the parties to name a substitute.

ARTICLE 12. If the *compromis* or a subsequent conven-

tion between the parties prescribes for the arbitral tribunal the procedure to be followed, or the observance of a determined and positive law of procedure, the arbitral tribunal must conform to that provision. In the absence of such a provision, the procedure to be followed shall be freely chosen by the arbitral tribunal, which is only bound to conform to the principles that it has declared to the parties that it desires to follow.

The direction of the arguments belongs to the president of the arbitral tribunal.

ARTICLE 13. Each of the parties may appoint one or more representatives before the arbitral tribunal.

ARTICLE 14. Exceptions based on incapacity of arbitrators should be advanced before any other. If the parties are silent, any subsequent objection is inadmissible, except in cases of incapacity originating subsequently.

The arbitrators are to decide on the exceptions based on the incompetence of the arbitral tribunal, except in the recourse referred to in Article 24, paragraph 2, and in conformity with the provisions of the *compromis*.

There shall be no appeal from preliminary judgments on competence, unless coupled with an appeal from the final arbitral decision.

In case doubt as to competence depends on the interpretation of a clause of the *compromis*, the parties are deemed to have given to the arbitrators the power to decide the question, in the absence of a stipulation to the contrary.

ARTICLE 15. In the absence of provisions in the *compromis* to the contrary, the arbitral tribunal has the power:

1. To determine the forms and periods in which each party must, through its duly authorized representatives, present its conclusions, establish them in fact and in law, submit its instruments of proof to the tribunal, communicate them to the adverse party, produce the documents whose production the adverse party requires;

2. To hold as admitted the contentions of each party which are not clearly disputed by the adverse party, as well

as the alleged contents of documents which the adverse party fails to produce without sufficient reasons;

3. To order new hearings, to require from each party explanation of doubtful points;

4. To issue orders of procedure (on the conduct of the case), to cause proofs to be furnished, and, if necessary, to call upon the competent tribunal for judicial acts for which the arbitral tribunal is not qualified, particularly sworn testimony of experts and witnesses;

5. To decide, in its free discretion, upon the interpretation of the documents produced and generally upon the worth of the instruments of proof presented by the parties.

The forms and periods mentioned under Nos. 1 and 2 of the present article shall be determined by the arbitrators in a preliminary order.

ARTICLE 16. Neither the parties nor the arbitrators can of their own accord involve any other States or third persons whatever in the case without special authorization expressed in the *compromis* and the previous consent of the third party.

The voluntary intervention of a third party is admissible only with the consent of the parties that have concluded the *compromis*.

ARTICLE 17. Counter-claims cannot be brought before the arbitral tribunal except so far as permitted by the *compromis*, or except when the two parties and the tribunal are in accord in admitting them.

ARTICLE 18. The arbitral tribunal gives judgment according to the principles of international law, unless the *compromis* imposes upon it different rules or leaves the decision to the free discretion of the arbitrators.

ARTICLE 19. The arbitral tribunal cannot refuse to give judgment under the pretext that it is not sufficiently informed either on the facts or on the legal principles that should be applied.

It must decide definitively each of the points in controversy. Nevertheless, if the *compromis* does not provide for a simultaneous definitive decision of *all* the points, the

tribunal may, while deciding definitively certain points, reserve the others for a later proceeding.

The arbitral tribunal may render interlocutory or preliminary decrees.

ARTICLE 20. The delivery of the final decision must take place within the time fixed by the *compromis* or by a subsequent convention. In the absence of other determination, the period of two years is considered as agreed upon, beginning from the day of the conclusion of the *compromis*. The day of conclusion is not included therein; nor is the time within which one or more arbitrators may have been prevented, by *force majeure*, from discharging their duties.

In case the arbitrators, by interlocutory decrees, order investigations, the time is increased by one year.

ARTICLE 21. Every final or provisional decision shall be made by a majority of all the arbitrators named, even when one or more of the arbitrators refuse to take part therein.

ARTICLE 22. If the arbitral tribunal finds that the contentions of none of the parties are established, it must declare this, and, if it is not limited in this respect by the *compromis*, it must lay down the real state of the law with respect to the parties in dispute.

ARTICLE 23. The arbitral award must be reduced to writing, and contain a statement of reasons, unless that is dispensed with under the stipulations of the *compromis*. It should be signed by each of the members of the arbitral tribunal. If the minority refuses to sign, the signature of the majority is sufficient, with the written declaration that the minority has refused to sign.

ARTICLE 24. The award, with the reasons, if stated, is notified to each party. The notification is effected by communication of a copy to the representative of each party, or to an empowered agent of each party appointed *ad hoc*.

Even if it has been communicated only to the representative or to the empowered agent of one party, the award can no longer be changed by the arbitral tribunal.

The tribunal, however, has the right, so long as the time mentioned in the *compromis* has not expired, to correct

mere errors in writing or reckoning, even when neither of the parties makes a motion to that effect, and to complete the award on undecided disputed points on the motion of one party and after a hearing of the adverse party. An interpretation of the award as notified is not admissible unless both parties request it.

ARTICLE 25. The award when duly pronounced decides, within the limits of its scope, the dispute between the parties.

ARTICLE 26. Each party shall bear its own expenses and a half of the expenses of the arbitral tribunal, without regard to the decision of the arbitral tribunal on the indemnity which one or the other of the parties may be adjudged to pay.

ARTICLE 27. The arbitral award is null in case of an invalid *compromis*, or in case of excess of authority, or of proved corruption of one of the arbitrators, or of essential error.

LAWS AND CUSTOMS OF WAR ON LAND— EXAMINATION OF THE DECLARATION OF BRUSSELS OF 1874¹

Following a communication made by Mr. Bluntschli, who had been one of the delegates from the German Empire to the Congress of Brussels for the reform of the laws and customs of war, the Institute had appointed a committee at its session in Geneva, 1874, to study the *Declaration* made at that Congress by the delegates of the European States, and to submit to the Institute the committee's opinion and supplementary propositions upon this subject.²

To attain this end Mr. Rolin-Jacquemyns, in February, 1875, addressed to the members of the committee, and submitted to the other members of the Institute, a *questionnaire* regarding the difficulties, general or special, theoretical or practical, to which an examination of the Declaration of Brussels might give rise.³ He then drew up a report in the form of a critical analysis of the various replies which were made to the *questionnaire*. To these documents were annexed a revised draft of the text of the Declaration of Brussels, by Mr. Moynier, letters from Messrs. de Parieu and W. B. Lawrence, a memorandum by Mr. M. Bernard, and an important and extensive note by Mr. Besobrasof.⁴

When the members of the committee had met at The Hague, they

¹ *Tableau général*, p. 155.

⁴ *Ibid.*, pp. 448-552.

² *Annuaire*, vol. 1, pp. 35, 47.

³ *Revue de droit international*, vol. vii, pp. 438-446.

thought that it would not be opportune or even possible to enter upon an examination of all the questions in detail, but that they should propose that the Institute express a uniform appreciation of the general utility of an international regulation of the law of war, and especially of the value of the Declaration of Brussels, from the point of view of humanity and science. The result of the deliberations of the committee was the adoption by a majority of a draft of resolutions to be submitted to the Institute in plenary session. The Institute, in its turn, after deliberating in the session of August 30, 1875, adopted the draft after making several slight changes.¹

The text adopted is as follows:

REGULATION OF THE LAWS AND CUSTOMS OF WAR

EXAMINATION BY THE INSTITUTE OF THE DECLARATION OF BRUSSELS OF 1874²

1. It is desirable that the laws and customs of war should be regulated by a convention, declaration, or agreement, of whatever character it may be, among the different civilized States.

2. Such a regulation could not, it is true, result in the complete suppression of the evils and dangers which war produces, but it might mitigate them to a large extent, either by determining the limits which the judicial conscience of civilized peoples imposes upon the use of force, or by placing the weak under the protection of positive law.

3. The draft Declaration accepted at Brussels, upon the generous initiative of His Majesty, the Emperor of Russia, while bearing considerable resemblance to the American instructions of President Lincoln, has the double advantage over them of extending to international relations a regulation made for a single State, and of containing new provisions, conceived in a spirit at once practical, humane and progressive.

4. Compared with the law of war set forth in the most recent works, the draft of Brussels is fundamentally, and as to all matters covered by it, at the zenith of present-day science. Doubtless the elasticity or vagueness of certain expressions may give rise, from a legal point of view, to rigorous criticism; but this difficulty must be regarded as an in-

¹ *Annuaire*, vol. 1, pp. 90 *et seq.*

² *Ibid.*, p. 133.

evitable consequence of the necessity of obtaining, above all, an agreement among the various States, and of ensuring the existence of this agreement by mutual concessions. Then, too, nothing will prevent the revision of the Declaration when an agreement is reached upon the improvements to be made thereto, when new theory and practice have dissipated doubts, decided controversies, made possible the development of principles only the germ of which can be included in an agreement to be executed to-day.

5. If the methods by which war has been conducted up to the present are examined, the draft Declaration gives a glimpse of important progress, the results of which appear to be all the more lasting from the very fact that we refrained from formulating Utopian *vœux*, and imposing upon armies, in the name of misunderstood philanthropy, requirements which are incompatible with their security and with the pursuit of military operations.

6. The provisions of the draft Declaration relating to the occupation of enemy territory are an application of this true principle: that the mere fact of occupation does not confer any right of sovereignty, but that the cessation of local resistance and the retreat of the national government, on the one hand, and, on the other, the presence of the invading army, create for the latter and the government which it represents obligations and rights which are essentially provisional. Along this line the draft tends, above all, to lay down the limits of these rights and to determine these obligations, which are dictated by the necessity of maintaining social order and protecting the security of individual and private property during the temporary absence of any regular government. The rules drawn up in this connection are doubtless susceptible of improvements as to detail, but at present they are fundamentally more favorable to the peaceful citizens and public and private property of the occupied country than the practice thus far followed and the doctrine of most authors.

7. The draft Declaration implies a fundamental distinction among three categories of persons, *viz.*: regular com-

batants, who must be treated as such; peaceful inhabitants, who must be protected both in person and property; and irregular combatants, who, not recognizing the laws of war, do not deserve to be treated as loyal enemies. This distinction is based upon the present manner of regarding war, which is made between States and not between individuals. It in nowise hinders the most energetic national defense by the mass of the population in arms. It even adds to the eventual effectiveness of this defense, by subjecting it to requirements of order and organization which are alone compatible with the conduct of a regular war between civilized nations. It is necessary, to this end, to require for regular combatants, except as provided in Article 10, a distinctive mark, fixed, recognizable at a distance, and, besides, easily procured, in order that armies on the march may know whether they are facing the peaceful inhabitants whom they must protect, or enemies whom they must attack.

8. The provisions concerning contributions and requisitions are equally in advance of the practice generally admitted in prior wars. Article 42, in particular, by requiring that for every requisition payment must be made or a receipt given, states a principle the consequences of which will be developed in the future and by a more humane practice.

9. Reprisals are a regrettable, but inevitable exception, in certain cases, to the general principle of equity that the innocent should not suffer for the guilty. As soon as it is admitted that reprisals cannot be completely prohibited it becomes desirable that, in accordance with the original Russian draft, they should be contained in the Declaration, for the purpose of restricting them according to the following principles:

(1) The method of making reprisals and the extent thereof should not exceed the extent of the infraction committed by the enemy;

(2) They should be formally prohibited in cases where the infraction complained of may have been repaired;

(3) They should not be made without the authority of the commander in chief;

(4) They should respect in all cases the laws of humanity and morality.

10. The Institute, without wishing to enter into a detailed examination of all the articles of the Declaration, believes it may recommend to the attention of the governments and their delegates, called upon to revise and complete the work of the Conference of Brussels, the observations and propositions presented individually by various members of the commission, among others:

(a) The various drafts of a definition of occupation in time of war, particularly the following definition: "a territory is considered as occupied from the moment when, as long as, and as completely as, the State to which it belongs is prevented, by the cessation of local resistance, from exercising publicly its sovereign authority in such territory";

(b) The proposition to provide that it is the duty of the military authority to notify the inhabitants of occupied territory as soon as possible that the occupation is established;

(c) The proposition to apply the general principle of restitution or indemnity in the case of stores of arms and ammunition belonging to individuals of the occupied country, as in the case of any other enemy private property;

(d) The proposition to add to the enumeration of methods which are prohibited in time of war, the destruction or laying waste by flooding, burning, etc., of a large part of the territory or permanent products of the enemy's soil, for a temporary purpose of the war;

(e) The proposition to take measures to ensure the formal and regular character of the receipts delivered to the inhabitants of the occupied territory who have been forced to give loans or services, contributions or requisitions;

(f) The *vœu* that the different Powers instruct their armies in the rules of international law.

11. The Institute adheres to the following *vœux* drawn up at the Conference of Brussels:

(1) By General Arnaudeau, in favor of an agreement

among the Powers to establish similarity in the methods of restraint at present provided in their military codes, and to seek some basis for an agreement having in view uniformity in the penalties for crimes, torts and infractions against international law (criminal law of war) ;

(2) By Baron Blanc and Colonel Count Lanza, that all parts of the military regulations concerning the relations of belligerents as among themselves, should be revised for the purpose of unification by an agreement of the governments;

(3) By Colonel Brun, to sanction the following provision: " After a battle, the belligerents are required to communicate to the adverse party the list of the dead who have fallen into their power. To make this measure easy of application, it is desirable that each soldier be supplied with a mark indicating his number (his name?) and the name of his regiment, as well as the number of his company." ¹

INTERNATIONAL DUTIES OF NEUTRAL STATES—RULES OF WASHINGTON ²

In 1871 the Cabinets of Washington and St. James had concluded a treaty with regard to the *Alabama* case which fixed the duties of neutral States, especially as regards the equipment of privateers in their ports. At the session of Geneva, 1874, the Institute placed upon its program an examination of the three rules proposed in the said treaty. Each of the members of the committee, Messrs. Calvo, Hautefeuille, Lorimer, Rolin and Woolsey, made a personal and independent investigation. Mr. Bluntschli, the reporter, after having summarized these studies, proposed a resolution which, amended and enlarged by the commission, served as a basis for the deliberations of the Institute at the session at The Hague.³

These deliberations took place on the thirtieth of August, 1875,⁴ and resulted in the adoption of the following conclusions:

INTERNATIONAL DUTIES OF NEUTRAL STATES—RULES OF WASHINGTON ⁵

1. A neutral State which is desirous of remaining on terms of peace and friendship with the belligerents, and of enjoy-

¹ For subsequent action of the Institute on the laws of land warfare, see *post*, pp. 17, 25.

² *Tableau général*, p. 161.

³ *Annuaire*, vol. 1, p. 33.

⁴ *Ibid.*, p. 108.

⁵ *Ibid.*, p. 139.

ing the rights of neutrality, must abstain from taking any part whatever in the war, by lending military assistance to one or both of the belligerents, and exercise vigilance to prevent its territory from becoming a center of organization or point of departure for hostile expeditions against one or both of the belligerents,

2. Consequently the neutral State cannot, in any manner whatever, put at the disposal of any of the belligerent States, or sell to them, its war vessels or military transports, nor material from its arsenals or military stores, for the purpose of assisting it in prosecuting the war. Furthermore, the neutral State is bound to exercise vigilance to prevent other persons from placing war vessels at the disposal of any of the belligerent States in its ports or in those portions of the sea subject to its jurisdiction.

3. When the neutral State is aware of enterprises or acts of this kind, incompatible with neutrality, it is bound to take the necessary measures to prevent them, and to prosecute the individuals who violate the duties of neutrality, as the guilty parties.

4. Likewise, the neutral State should not permit nor suffer one of the belligerents to use its ports or waters as a naval base of operations against the other, or permit military transports to use its ports or waters to renew or add to their military supplies or arms, or to secure recruits.

5. The mere fact that a hostile act has been committed upon neutral territory is not sufficient to make the neutral State responsible. Before it can be admitted that it has violated its duty it must be shown that there was a hostile intention (*dolus*), or manifest negligence (*culpa*).

6. Only in serious and urgent cases, and only during the existence of war, has the Power injured by a violation of neutral duties the right to consider neutrality as abandoned and to resort to force to defend itself against the State which has violated neutrality.

In cases of a minor character, or where the matter is not urgent, or after the war is over, complaints of this character should be settled exclusively by arbitration.

7. The arbitral tribunal decides *ex æquo et bono* on the questions of damages which the neutral State should, by reason of its responsibility, pay to the injured State, either for the State itself, or for its nationals (*ressortissants*).

TREATMENT OF PRIVATE PROPERTY IN NAVAL WARFARE ¹

At the session in Geneva (1874) the Institute named a committee, at the suggestion of Messrs. de Laveleye, Mancini and Bluntschli, to study the question of respect for private property at sea. This committee met the next year at The Hague, under the presidency of Mr. de Laveleye, reporter, who submitted to it a memoir upon this subject;² at the same time Mr. Pierantoni presented to the committee a report upon "Maritime prizes according to the Italian school and legislation," which, being thorough, served as the basis for the study of this particular topic, which the Institute then undertook.³ At the session at The Hague, the Institute considered in the plenary session of August 31, 1875,⁴ the conclusions proposed by the committee and adopted the following text:⁵

1. The principle of the inviolability of enemy private property sailing under a neutral flag should be considered henceforth as fixed in the domain of the positive law of nations.

2. It is desirable that the principle of the inviolability of enemy private property sailing under the enemy flag should be universally accepted in the following terms, taken from the declarations of Prussia, Austria and Italy in 1866, and under the reservation hereinafter stated, *sub* 3:

Merchant vessels and their cargoes cannot be captured unless they carry contraband of war or unless they try to violate an effective and declared blockade.

3. It is understood that in accordance with the general principles which should govern naval war as well as land

¹ *Tableau général*, p. 190.

⁴ *Ibid.*, vol. 1, p. 115.

² *Revue de droit international*, vol. vii, pp. 560-602.

⁵ *Ibid.*, p. 118.

³ *Annuaire*, vol. 1, p. 48; vol. 2, p. 57.

warfare, the preceding provision is not applicable to merchant vessels which, directly or indirectly, take part in or are intended to take part in hostilities.

At this same session the Institute referred to the committee of which Mr. de Laveleye was reporter, a question raised by Mr. Bluntschli in the following language: "Having regard to the necessities of naval warfare, what should be the restrictions which should be placed upon the principle of the inviolability of enemy private property, in harmony with what has been done on the same subject in land warfare with regard to railroads and other means of military transportation?" Mr. de Laveleye, being obliged to resign his office on account of his health, was replaced by Mr. Bulmerincq as reporter, and the latter submitted a draft and conclusions¹ to the Institute at the session in Zürich (1877).

These conclusions were discussed in the plenary session of September 11, 1877,² and adopted in the following form:³

1. Neutral or enemy private property sailing under enemy or neutral flag is inviolable.

2. The following are always subject to seizure: objects intended for war or susceptible of being immediately employed therein. Belligerent governments shall in every war determine in advance what articles they will consider within the above description. Merchant vessels which have taken part in the hostilities, or are in condition to take such part immediately, or which have run a blockade which was declared and was effective, are also subject to seizure.

3. A blockade is effective when it results in preventing access to the blockaded port by means of a sufficient number of war vessels stationed there, or absent from such station only temporarily. There is a breach of the blockade when a merchant vessel, having information of the blockade, attempts by force or strategy to penetrate the line of the blockade.

4. Privateering is forbidden.

5. The right of visit may be exercised by war vessels of belligerent Powers on merchant vessels with a view to ascer-

¹ *Ibid.*, p. 110.

² *Ibid.*, vol. 2, p. 58.

³ *Ibid.*, p. 152.

taining their nationality, searching for objects susceptible of capture, or to prove a breach of blockade. The right of visit may be exercised from the moment the declaration of war is published until the conclusion of peace. It is suspended during a truce or armistice. It may be exercised within the waters of belligerents as well as upon the high seas, but not as to neutral war vessels, nor as to those which ostensibly belong to a neutral State. The commander of the vessel which makes the visit should limit himself to an examination of the ship's papers. He has no authority to make a search of the vessel if the ship's papers do not furnish ground for the suspicion of fraud, or furnish the proof thereof, or unless there are serious grounds for presuming that objects intended for war are on board.

COMPROMIS CLAUSE¹

In a letter written September 4, 1877, to the President of the Institute, Mr. Mancini, at that time Italian Minister of Finance, expressed the hope "that it would be possible to insert in most of the treaties of commerce and navigation now being negotiated between Italy and foreign governments a *compromis* clause whereby the high contracting parties would mutually bind themselves to submit to the peaceful method of arbitration the settlement of controversies which might arise concerning the interpretation and the application of the treaties."²

At its Zürich meeting, the Institute saw in this important statement, an opportunity, not only of expressing a *vœu* in favor of the general application of the system, but also of recalling its deliberations on the subject of the procedure to be followed in courts of arbitration. Therefore, in its session of September 12, 1877, on the motion of Mr. Bluntschli, it adopted the following resolution:³

INTERNATIONAL ARBITRATION—COMPROMIS CLAUSE

The Institute of International Law urgently recommends the insertion in future international treaties of a *compromis* clause stipulating recourse to arbitration in case of a dispute

¹ *Tableau général*, p. 131.

² *Ibid.*, vol. 2, pp. 147, 160.

³ *Annuaire*, vol. 2, p. 16.

concerning the interpretation and application of these treaties.

The Institute further proposes that, in consideration of the difficulty that the parties might have in agreeing in advance upon the procedure to be followed, the following provision be added to the *compromis* clause:

If the contracting States have not agreed in advance upon other provisions regarding the procedure to be followed in the court of arbitration, the regulations sanctioned by the Institute at The Hague, August 28, 1875, shall be applied.

REGULATION OF THE LAWS AND CUSTOMS OF WAR¹

After having adopted at the meeting at The Hague the *Resolutions* reproduced above² regarding the Declaration of Brussels of 1874, the Institute instructed the same committee "*as occasion offered*" to follow out the progress of regulation of the laws and customs of war." The committee did not have occasion to make any study of the subject during the following years.³ When war broke out in 1877 between Russia and Turkey, the Bureau, at the suggestion of Mr. Moynier, published an "Appeal to belligerents and to the press," drawn up by Messrs. Bluntschli, Moynier and Rolin-Jaequemyns, for the purpose of recalling the fact "that a law of war exists, still imperfect of course, but requiring at present that belligerents observe certain rules which are clearly determined," and of indicating such rules as should be henceforth considered part of public European law.⁴

The Institute at its session in Zürich was called upon to pass upon the circular which the Bureau had published in its name, and at the session of September 11, 1877, it ratified unanimously the text and the publication thereof.⁵ It then went into the question as to whether there was any reason to confirm this circular by a more elaborate Declaration, which could be inserted in its minutes and made public; after deciding in favor of this plan, it appointed Messrs. Moynier and Rolin-Jaequemyns to draw up the text of this Declaration.

This text was adopted at the session of September 12, 1877, in the following form:⁶

¹ *Tableau général*, p. 163.

² *Ante*, p. 8.

³ *Annuaire*, vol. 2, p. 131.

⁴ *Ibid.*, p. 132.

⁵ *Ibid.*, p. 138.

⁶ *Ibid.*, p. 141.

APPLICATION OF THE LAW OF NATIONS TO THE WAR OF 1877
BETWEEN RUSSIA AND TURKEY ¹

The Institute of International Law, assembled for its regular meeting at Zürich, declares that it approves, and ratifies in the most complete manner, the "Appeal to belligerents and to the press" published in its name by its Bureau, on May 28, 1877.

Inspired by the idea which dictated the above act, the Institute believes it should not bring its present session to a close without raising its voice again in favor of law and humanity. The Institute, however, is determined to limit itself to its proper sphere and will not express any collective opinion concerning the facts which have actually brought about war between Russia and Turkey, nor upon the measures to be taken for satisfying by means of treaties the legitimate interests involved in the conflict.

This assembly believes it can profitably consider positive international law, binding upon all, and not decisions arrived at as matters of policy or diplomacy,—and especially the laws of war, accurately defined by the act of May 28, their recognition and application. Even in this limited sphere it will abstain from any opinion which may not be founded upon irrefutable proof.

On both sides the belligerents accuse each other of failing to recognize the laws of war. Each day brings to us a detailed recital of new horrors. Unfortunately, even if it must be recognized that the greater number of these deeds, which are so disgraceful to our age and cause us to view the future with alarm, are only too real, the means of seeking the truth in each particular case are most often lacking.

The Institute therefore cannot consider giving itself up to an impossible inquiry, based upon a daily increasing number of impassioned charges. But it is a different question which an association of juriconsults, created to "promote the progress of international law," should meet and has the means to solve. That question is as to how far the bellig-

¹ *Annuaire*, vol. 2, p. 154.

erents have gone to assure themselves so far as possible of the recognition and observance of the laws of war by their respective armies.

Here are the unquestioned facts on this point.

Almost at the moment that the "Appeal to belligerents and to the press" appeared, an imperial ukase, dated May 12/24, 1877, ordered all the civil and military authorities of the Russian Empire to observe not only the Geneva Convention of 1864 and the Declaration of St. Petersburg of 1868, but also the principles proclaimed by the Conference of Brussels, 1874.

The same conventions and the same principles have been brought to the attention of the Russian troops by means of a sort of military catechism, in the form of questions and answers, published June 1/13, 1877, in the *Recueil militaire russe*, the official organ of the Ministry of War. This publication was issued in several thousand copies and distributed through the active army.

The Russian Government finally published on July 10/22, 1877, a "Regulation concerning prisoners of war," which sanctions the most humane rules of the law of nations as obligatory upon its armies.

In connection with these acts, which prove at least the efforts made by the Russian Government to remove any pretext for ignorance on the part of its soldiers, and to show them that the observation of the laws of war is a part of their professional duties, the Institute regrets that it is obliged to say that no official act has come from the Turkish Government for the purpose of bringing clearly to the knowledge of its troops the customary law, especially the provisions of this law formulated in the draft of the Declaration of Brussels.

Is the situation any different where the written law is concerned, that is, the Geneva Convention? Unhappily, no. The very text of this treaty has just been translated into Turkish for the first time only after the representations of several neutral Powers, signatories of the same act. It is not rash to assert that the Turkish troops are ignorant of their obli-

gations in this regard, when the Government itself pays no attention thereto. In fact, a letter from Safvet Pasha, Minister of Foreign Affairs, to the Swiss Federal Council, dated November 16, 1876, contains the sentence: "As a signatory of the Geneva Convention Turkey agreed to respect and protect the ambulances of the Red Cross Society, at the same time that she acquired the right to form societies herself having the same purpose and governed by the same rules"! It is well known that the convention of 1864 does not concern societies of this character.

We may also be astonished that the Porte, which was a signatory of the Geneva Convention from July 5, 1865, and which tacitly ratified it by the silence of its representatives at Brussels in 1874, waited until the end of 1876 before perceiving that the Red Cross "wounds the susceptibilities of the mussulman soldier." (Dispatch above cited, November 16.)

It is true that on June 13, 1877, the Turkish Government, after having begun by substituting by its own authority the Crescent for the Red Cross in its field hospitals, affirmed in another dispatch to the Swiss Federal Government that formal instructions had just been issued to the Ottoman troops to respect the Red Cross of the Russians.

The Institute, while gratified at this recognition of an international obligation, regrets that it is not informed as to the tenor, or the date of the instructions in question. Neither can it refrain from noting that more than two months after the dispatch of the thirteenth of June, Germany and several other Powers which were signatories of the Geneva Convention found it necessary to remind Turkey of the observance of its contractual agreements.

It is not the sphere of the Institute to inquire whether one or the other of the belligerents considered the violation, or permission to violate, the laws of war by its troops. But outside the question of good faith there is a question of responsibility which may result either from neglecting the instruction of troops, or from the employment of savage hordes incapable of conducting a regular war. It is the duty of

States which call themselves civilized and form part of the concert of Europe to reject absolutely the use of such auxiliaries. A Government which owes its victory to them makes itself an international outlaw. It would become responsible for all those evil instincts which it did not suppress, for all that barbarism against which it had not reacted.

The Institute could not therefore accept as a valid excuse one which threw upon irregular troops, Bashi-Bazouks, Circassians, Kurds or others, responsibility for the alleged cruelties. If these troops are absolutely incapable of conducting themselves like human and rational beings the mere fact of employing them is a grave infraction of the laws of war, as all authors have unanimously taught for some time. If this absolute incapacity does not exist, then the belligerent which utilizes these troops must control them.

The Institute, by calling attention to these abuses and in protesting against their continuance, is far from desirous of aggravating the disagreements and calling forth useless reprisals. Animated by an ardent love of peace and justice the Institute intends only to employ all of its influence which it owes to its organization, to its antecedents, to the special studies of its members, to indicate what it believes would prevent modern wars from presenting a degrading spectacle of ferocity and bestiality pushed to their utmost bounds, while exhibiting at the same time the noblest examples of courage, patriotism and charity.

In this spirit the Institute expresses the following *vœux*:

1. That the various States mutually bind themselves by contract to observe certain laws and customs of war, as a complement to the work commenced at Brussels in 1874, and in accordance with the conclusions adopted by the Institute at The Hague in 1875;

2. That the laws and customs of war, to be formulated in a treaty, be by that very fact placed under the protection of all of the European States, and that the latter, with a view to enlightening opinion, develop, if possible, an organization of military attachés commissioned to follow belligerent

armies and to inform their governments of serious infractions against the laws of war which they may find. An excellent example of this was given by the English Government when it published the reports of Colonel Wellesley;

3. That the various governments take such measures as are necessary to bring these laws and customs to the individual knowledge of the officers and soldiers in their service;

4. That as an administrative measure to guarantee that special information has been given to the chiefs of corps, at least, each officer, before entering a campaign, should sign a *procès-verbal* stating that he has read an instruction relating to the laws and customs of war, and that he has also received a copy of this instruction.¹

ORGANIZATION OF AN INTERNATIONAL PRIZE COURT ²

At the session at The Hague, the Institute, at the suggestion of Mr. Westlake, formed a committee for the purpose of studying a plan for the organization of an international prize court and named Mr. Westlake reporter thereof.³

At the session at Zürich, Mr. Westlake presented a draft which he could not personally be present to defend. At the plenary session of September 12, 1877, the Institute adopted three resolutions drawn up by Messrs. Bluntschli and Rolin-Jaequemyns,⁴ and instructed Mr. Bulmerincq to draw up after the session a report upon the question and the resolutions adopted. This report is inserted in the *Annuaire*.⁵

The resolutions adopted are as follows:

PLAN FOR ORGANIZATION OF AN INTERNATIONAL COURT OF PRIZE ⁶

The Institute declares that the present system of courts and administration of justice in matters of prize is defective, and considers the matter of remedying this state of things

¹ For subsequent action by the Institute on the law of land warfare, see *post*, p. 25.

² *Tableau général*, p. 193.

³ *Annuaire*, vol. 1, p. 121.

⁴ *Ibid.*, vol. 2, p. 124.

⁵ *Ibid.*, pp. 113 *et seq.*

⁶ *Ibid.*, p. 153.

by a new international institution an urgent one. It is of the opinion that there is ground for:

1. Formulating in a treaty the general principles applicable to prize matters;

2. Replacing the courts hitherto exclusively composed of judges belonging to the belligerent State by international tribunals which would give to the interested individuals of the neutral or enemy State the broadest guaranties of an impartial decision;

3. Agreeing upon a common procedure to be adopted in prize matters.

However, the Institute believes it should declare that at present it would consider the establishment of mixed tribunals, whether of first instance or of appeal, on the basis of the draft worked out by Mr. Westlake, as a step in advance.

INTERNATIONAL PROTECTION OF THE SUEZ CANAL¹

At the time of the war between Russia and Turkey, the Institute thought it useful at its session in Zürich, September 13, 1877, to instruct a committee to study the methods by which the Suez Canal might regularly and finally be withdrawn from the jurisdiction of the common law of war.² Sir Travers Twiss, who was named as reporter thereof, presented a memoir on the question at the session of Paris, 1878.³ This memoir containing no draft of resolutions, the Institute instructed the committee to prepare a draft for the following session.⁴

At the session of Brussels, Sir Travers Twiss, in collaboration with Mr. Martens, presented a second report, following which the committee drew up a draft of *resolutions*, which was adopted by the Institute in plenary session on September 4, 1879, with the recommendation that they be communicated to Mr. Ferdinand de Lesseps personally and to the *Compagnie universelle du canal de Suez*.

RESOLUTIONS⁵

1. It is of general interest to all nations that the maintenance and use of the Suez Canal for all kinds of communi-

¹ *Tableau général*, p. 84.

² *Ibid.*, vol. 3, p. 111.

³ *Ibid.*, p. 349.

⁴ *Annuaire*, vol. 2, p. 147.

⁵ *Ibid.*, p. 128.

cation shall be protected as much as possible by conventional international law.

2. For this purpose it is desirable that States unite with a view to avoiding as much as possible any measure which may damage or put in danger the canal and its appendages even in case of war.

3. If a Power should damage the works of the *Compagnie universelle du canal de Suez*, it shall be required as a matter of law to repair the damage caused as promptly as possible, and to restore full liberty of navigation of the canal.

SUBMARINE CABLES ¹

At the session of Paris, in 1878, Mr. Renault had proposed the formation of a committee to study the means of protecting from destruction, both in time of peace and in time of war, submarine telegraph cables having an international importance.²

This proposition was accepted by the Institute and its author was named reporter of the commission. At the Brussels session in 1879 Mr. Renault presented, on this subject, a report³ to which the committee added a body of conclusions. The Institute after a deliberation in plenary session, September 5, 1879, adopted the following resolutions:⁴

1. It would be very advantageous if the several States would agree to declare that the destruction or injury of submarine cables in the high seas is an offense against the law of nations, and to determine in a precise manner the criminal character of the acts and the applicable penalties; with regard to this latter point a degree of uniformity compatible with the diversity of criminal legislations would be sought.

The right of seizing persons who are guilty or presumed to be guilty might be granted to government ships of all nations under conditions regulated by treaties; but the right to pass judgment upon them should be reserved to the national courts of the captured vessel.

¹ *Annuaire*, vol. 20, p. 345.

² *Ibid.*, vol. 3, p. 155.

³ *Ibid.*, pp. 351, 383.

⁴ *Ibid.*, p. 394.

2. A submarine telegraphic cable uniting two neutral territories is inviolable.

It is desirable, when telegraphic communications must cease by reason of a state of war, that the measures taken be only those strictly necessary to prevent use of the cable and that they be withdrawn, or that their consequences be repaired, as soon as cessation of hostilities permits.¹

LAWS AND CUSTOMS OF WAR ON LAND²

MOTION OF MR. ROLIN-JAEQUEMYS AT THE PARIS SESSION

At the Paris session (1878) Mr. Rolin-Jaequemys recommended to the attention of the Institute "the study of the codes and regulations which the governments of several countries have recently drawn up for their armies and in which is prescribed the observation of the laws and customs of war."³

Mr. Moynier undertook this study and presented to the Institute at the Brussels session (1879) a report,⁴ to which was added a note by Mr. Hornung.⁵ After a thorough discussion of the conclusions in Mr. Moynier's report during the meetings of September 2 and 3, 1879, the Institute directed the committee which for several years had been occupied with these questions to draw up a *Manual of the laws and customs of war*.⁶

This work, drawn up by Mr. Moynier, the reporter, was first communicated in proof sheets to all the members and associates of the Institute. Then it was discussed by the committee in meetings held for the purpose at Heidelberg, June 18-20, 1880, and was finally submitted to the Institute at its Oxford session September 9, 1880, with a second report of Mr. Moynier.⁷ On motion of Mr. Neumann the *Manual*⁸ as thus prepared was adopted as a whole in the same meeting by unanimous vote of the

¹ For subsequent action of the Institute on the subject of cables, see *post*, p. 161.

² *Tableau général*, p. 169.

³ *Annuaire*, vol. 3, p. 311.

⁴ *Ibid.*, pp. 312-320.

⁵ *Ibid.*, p. 320.

⁶ *Ibid.*, pp. 326 *et seq.*

⁷ *Ibid.*, vol. 5, p. 150.

⁸ The present *Manual* was worked out by a committee in whose labors the following participated: Messrs. M. Bernard (Great Britain), J. C. Bluntschli (Germany), den Beer Poortugael (Netherlands), W. E. Hall (Great Britain), T. E. Holland (Great Britain), N. Landa (Spain), Ch. Lucas (France), F. Martens (Russia), L. Neumann (Austria), A. Pierantoni (Italy), A. Rivier (Switzerland), H. Schulze (Germany), G. Moynier (Switzerland), reporter.

members present, and the Bureau was directed to communicate it to the several Governments of Europe and America, adding thereto a letter of transmittal and Mr. Moynier's last report.¹

THE LAWS OF WAR ON LAND ²

MANUAL PUBLISHED BY THE INSTITUTE OF INTERNATIONAL
LAW

PREFACE

War holds a great place in history, and it is not to be supposed that men will soon give it up—in spite of the protests which it arouses and the horror which it inspires—because it appears to be the only possible issue of disputes which threaten the existence of States, their liberty, their vital interests. But the gradual improvement in customs should be reflected in the method of conducting war. It is worthy of civilized nations to seek, as has been well said,³ “to restrain the destructive force of war, while recognizing its inexorable necessities.”

This problem is not easy of solution; however, some points have already been solved, and very recently the draft of Declaration of Brussels has been a solemn pronouncement of the good intentions of governments in this connection. It may be said that independently of the international laws existing on this subject, there are to-day certain principles of justice which guide the public conscience, which are manifested even by general customs, but which it would be well to fix and make obligatory. That is what the Conference of Brussels attempted, at the suggestion of His Majesty the Emperor of Russia, and it is what the Institute of International Law, in its turn, is trying to-day to contribute. The Institute attempts this although the governments have not ratified the draft issued by the Conference at Brussels, because since 1874 ideas, aided by reflection and experience, have had time to mature, and because it seems less difficult than it did then to trace rules which would be acceptable to all peoples.

¹ *Annuaire*, vol. 5, p. 156.

² *Ibid.*, p. 157.

³ Baron Jomini.

The Institute, too, does not propose an international treaty, which might perhaps be premature or at least very difficult to obtain; but, being bound by its by-laws to work, among other things, for the observation of the laws of war, it believes it is fulfilling a duty in offering to the governments a *Manual* suitable as the basis for national legislation in each State, and in accord with both the progress of juridical science and the needs of civilized armies.

Rash and extreme rules will not, furthermore, be found therein. The Institute has not sought innovations in drawing up the *Manual*; it has contented itself with stating clearly and codifying the accepted ideas of our age so far as this has appeared allowable and practicable.

By so doing, it believes it is rendering a service to military men themselves. In fact, so long as the demands of opinion remain indeterminate, belligerents are exposed to painful uncertainty and to endless accusations. A positive set of rules, on the contrary, if they are judicious, serves the interests of belligerents and is far from hindering them, since by preventing the unchaining of passion and savage instincts—which battle always awakens, as much as it awakens courage and manly virtues,—it strengthens the discipline which is the strength of armies; it also ennobles their patriotic mission in the eyes of the soldiers by keeping them within the limits of respect due to the rights of humanity.

But in order to attain this end it is not sufficient for sovereigns to promulgate new laws. It is essential, too, that they make these laws known among all people, so that when a war is declared, the men called upon to take up arms to defend the causes of the belligerent States, may be thoroughly impregnated with the special rights and duties attached to the execution of such a command.

The Institute, with a view to assisting the authorities in accomplishing this part of their task, has given its work a popular form, attaching thereto statements of the reasons therefor, from which the text of a law may be easily secured when desired.

THE LAWS OF WAR ON LAND

PART I.—GENERAL PRINCIPLES

ARTICLE 1. The state of war does not admit of acts of violence, save between the armed forces of belligerent States.

Persons not forming part of a belligerent armed force should abstain from such acts.

This rule implies a distinction between the individuals who compose the "armed force" of a State and its other *ressortissants*. A definition of the term "armed force" is, therefore, necessary.

ARTICLE 2. The armed force of a State includes:

1. The army properly so called, including the militia;
2. The national guards, landsturm, free corps, and other bodies which fulfil the three following conditions:

(a) That they are under the direction of a responsible chief;

(b) That they must have a uniform, or a fixed distinctive emblem recognizable at a distance, and worn by individuals composing such corps;

(c) That they carry arms openly;

3. The crews of men-of-war and other military boats;

4. The inhabitants of non-occupied territory, who, on the approach of the enemy, take up arms spontaneously and openly to resist the invading troops, even if they have not had time to organize themselves.

ARTICLE 3. Every belligerent armed force is bound to conform to the laws of war.

The only legitimate end that States may have in war being to weaken the military strength of the enemy (*Declaration of St. Petersburg, 1868*),

ARTICLE 4. The laws of war do not recognize in belligerents an unlimited liberty as to the means of injuring the enemy.

They are to abstain especially from all needless severity, as well as from all perfidious, unjust, or tyrannical acts.

ARTICLE 5. Military conventions made between belligerents during the continuance of war, such as armistices and capitulations, must be scrupulously observed and respected.

ARTICLE 6. No invaded territory is regarded as conquered until the end of the war; until that time the occupant exercises, in such territory, only a *de facto* power, essentially provisional in character.

PART II.—APPLICATION OF GENERAL PRINCIPLES

I.—HOSTILITIES

A.—RULES OF CONDUCT WITH REGARD TO INDIVIDUALS

(a) *Inoffensive Populations*

The contest being carried on by “armed forces” only (Article 1),

ARTICLE 7. It is forbidden to maltreat inoffensive populations.

(b) *Means of Injuring the Enemy*

As the struggle must be honorable (Article 4),

ARTICLE 8. It is forbidden:

(a) To make use of poison, in any form whatever;

(b) To make treacherous attempts upon the life of an enemy; as, for example, by keeping assassins in pay or by feigning to surrender;

(c) To attack an enemy while concealing the distinctive signs of an armed force;

(d) To make improper use of the national flag, military insignia or uniform of the enemy, of the flag of truce and of the protective signs prescribed by the *Geneva Convention* (Articles 17 and 40 below).

As needless severity should be avoided (Article 4),

ARTICLE 9. It is forbidden:

(a) To employ arms, projectiles, or materials of any kind calculated to cause superfluous suffering, or to aggravate wounds,—notably projectiles of less weight than four hundred grams which are explosive or are charged with

fulminating or inflammable substances. (*Declaration of St. Petersburg.*)

(b) To injure or kill an enemy who has surrendered at discretion or is disabled, and to declare in advance that quarter will not be given, even by those who do not ask it for themselves.

(c) *The Sick and Wounded, and the Sanitary Service*

The following provisions (Articles 10 to 18), drawn from the *Geneva Convention*, exempt the sick and wounded, and the personnel of the sanitary service, from many of the needless hardships to which they were formerly exposed:

ARTICLE 10. Wounded or sick soldiers should be brought in and cared for, to whatever nation they belong.

ARTICLE 11. Commanders in chief have power to deliver immediately to the enemy outposts hostile soldiers who have been wounded in an engagement, when circumstances permit and with the consent of both parties.

ARTICLE 12. Evacuations, together with the persons under whose direction they take place, shall be protected by neutrality.

ARTICLE 13. Persons employed in hospitals and ambulances—including the staff for superintendence, medical service, administration and transport of wounded, as well as the chaplains, and the members and agents of relief associations which are duly authorized to assist the regular sanitary staff,—are considered as neutral while so employed, and so long as there remain any wounded to bring in or to succor.

ARTICLE 14. The personnel designated in the preceding article should continue, after occupation by the enemy, to tend, according to their needs, the sick and wounded in the ambulance or hospital which it serves.

ARTICLE 15. When such personnel requests to withdraw, the commander of the occupying troops sets the time of departure, which however he can only delay for a short time in case of military necessity.

ARTICLE 16. Measures should be taken to assure, if possible, to neutralized persons who have fallen into the hands of the enemy, the enjoyment of fitting maintenance.

ARTICLE 17. The neutralized sanitary staff should wear a white arm-badge with a red cross, but the delivery thereof belongs exclusively to the military authority.

ARTICLE 18. The generals of the belligerent Powers should appeal to the humanity of the inhabitants, and should endeavor to induce them to assist the wounded, by pointing out to them the advantages that will result to themselves from so doing (Articles 36 and 59). They should regard as inviolable those who respond to this appeal.

(d) The Dead

ARTICLE 19. It is forbidden to rob or mutilate the dead lying on the field of battle.

ARTICLE 20. The dead should never be buried until all articles on them which may serve to fix their identity, such as pocket-books, numbers, etc., shall have been collected.

The articles thus collected from the dead of the enemy are transmitted to its army or government.

(e) Who May Be Made Prisoners of War

ARTICLE 21. Individuals who form a part of the belligerent armed force, if they fall into the hands of the enemy, are to be treated as prisoners of war, in conformity with Articles 61 *et seq.*

The same rule applies to messengers openly carrying official dispatches, and to civil aeronauts charged with observing the enemy, or with the maintenance of communications between the various parts of the army or territory.

ARTICLE 22. Individuals who accompany an army, but who are not a part of the regular armed force of the State, such as correspondents, traders, sutlers, etc., and who fall into the hands of the enemy, may be detained for such length of time only as is warranted by strict military necessity.

(f) Spies

ARTICLE 23. Individuals captured as spies cannot demand to be treated as prisoners of war.

But

ARTICLE 24. Individuals may not be regarded as spies, who, belonging to the armed force of either belligerent, have penetrated, without disguise, into the zone of operations of the enemy,—nor bearers of official dispatches, carrying out their mission openly, nor aeronauts (Article 21).

In order to avoid the abuses to which accusations of espionage too often give rise in war it is important to assert emphatically that

ARTICLE 25. No person charged with espionage shall be punished until the judicial authority shall have pronounced judgment.

Moreover, it is admitted that

ARTICLE 26. A spy who succeeds in quitting the territory occupied by the enemy incurs no responsibility for his previous acts, should he afterwards fall into the hands of that enemy.

(g) *Parlementaires*

ARTICLE 27. A person is regarded as a parlementaire and has a right to inviolability who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag.

ARTICLE 28. He may be accompanied by a bugler or a drummer, by a color-bearer, and, if need be, by a guide and interpreter, who also are entitled to inviolability.

The necessity of this prerogative is evident. It is, moreover, frequently exercised in the interest of humanity.

But it must not be injurious to the adverse party. This is why

ARTICLE 29. The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

Besides,

ARTICLE 30. The commander who receives a parlementaire has a right to take all the necessary steps to prevent the presence of the enemy within his lines from being prejudicial to him.

The parlementaire and those who accompany him should behave fairly towards the enemy receiving them (Article 4).

ARTICLE 31. If a parlementaire abuse the trust reposed in him he may be temporarily detained, and, if it be proved that he has taken advantage of his privileged position to abet a treasonable act, he forfeits his right to inviolability.

B. RULES OF CONDUCT WITH REGARD TO THINGS

(a) *Means of Injuring—Bombardment*

Certain precautions are made necessary by the rule that a belligerent must abstain from useless severity (Article 4). In accordance with this principle

ARTICLE 32. It is forbidden:

- (a) To pillage, even towns taken by assault;
- (b) To destroy public or private property, if this destruction is not demanded by an imperative necessity of war;
- (c) To attack and to bombard undefended places.

If it is incontestable that belligerents have the right to resort to bombardment against fortresses and other places in which the enemy is entrenched, considerations of humanity require that this means of coercion be surrounded with certain modifying influences which will restrict as far as possible the effects to the hostile armed force and its means of defense. This is why

ARTICLE 33. The commander of an attacking force, save in cases of open assault, shall, before undertaking a bombardment, make every due effort to give notice thereof to the local authorities.

ARTICLE 34. In case of bombardment all necessary steps must be taken to spare, if it can be done, buildings dedicated to religion, art, science and charitable purposes, hospitals and places where the sick and wounded are gathered on the condition that they are not being utilized at the time, directly or indirectly, for defense.

It is the duty of the besieged to indicate the presence of such buildings by visible signs notified to the assailant beforehand.

(b) *Sanitary Matériel*

The arrangements for the relief of the wounded, which are made the subject of Articles 10 *et seq.*, would be inadequate were not sanitary establishments also granted special protection. Hence, in accordance with the *Geneva Convention*,

ARTICLE 35. Ambulances and hospitals for the use of armies are recognized as neutral and should, as such, be protected and respected by belligerents, so long as any sick or wounded are therein.

ARTICLE 36. The same rule applies to private buildings, or parts of buildings, in which sick or wounded are gathered and cared for.

Nevertheless,

ARTICLE 37. The neutrality of hospitals and ambulances ceases if they are guarded by a military force; this does not preclude the presence of police guard.

ARTICLE 38. As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals cannot, in withdrawing, carry away any articles but such as are their private property. Ambulances, on the contrary, retain all their equipment.

ARTICLE 39. In the circumstances referred to in the above paragraph, the term "ambulance" is applied to field hospitals and other temporary establishments which follow the troops on the field of battle to receive the sick and wounded.

ARTICLE 40. A distinctive and uniform flag is adopted for ambulances, hospitals, and evacuations. It bears a red cross on a white ground. It must always be accompanied by the national flag.

II.—OCCUPIED TERRITORY

A.—DEFINITION

ARTICLE 41. Territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there. The limits within which this state of affairs exists determine the extent and duration of the occupation.

B.—RULES OF CONDUCT WITH RESPECT TO PERSONS

In consideration of the new relations which arise from the provisional change of government (Article 6),

ARTICLE 42. It is the duty of the occupying military authority to inform the inhabitants, at the earliest practicable moment, of the powers that it exercises, as well as of the local extent of the occupation.

ARTICLE 43. The occupant should take all due and needful measures to restore and ensure public order and public safety.

To that end

ARTICLE 44. The occupant should maintain the laws which were in force in the country in time of peace, and should not modify, suspend, or replace them, unless necessary.

ARTICLE 45. The civil functionaries and employees of every class who consent to continue to perform their duties are under the protection of the occupant.

They may always be dismissed, and they always have the right to resign their places.

They should not be summarily punished unless they fail to fulfil obligations accepted by them, and should be handed over to justice only if they violate these obligations.

ARTICLE 46. In case of urgency, the occupant may demand the coöperation of the inhabitants, in order to provide for the necessities of local administration.

As occupation does not entail upon the inhabitants a change of nationality,

ARTICLE 47. The population of the invaded district cannot be compelled to swear allegiance to the hostile Power; but inhabitants who commit acts of hostility against the occupant are punishable (Article 1).

ARTICLE 48. The inhabitants of an occupied territory who do not submit to the orders of the occupant may be compelled to do so.

The occupant, however, cannot compel the inhabitants

to assist him in his works of attack or defense, or to take part in military operations against their own country (Article 4).

Besides,

ARTICLE 49. Family honor and rights, the lives of individuals, as well as their religious convictions and practice, must be respected (Article 4).

C.—RULES OF CONDUCT WITH REGARD TO PROPERTY

(a) *Public Property*

Although the occupant replaces the enemy State in the government of the invaded territory, his power is not absolute. So long as the fate of this territory remains in suspense—that is, until peace—the occupant is not free to dispose of what still belongs to the enemy and is not of use in military operation. Hence the following rules:

ARTICLE 50. The occupant can only take possession of cash, funds and realizable or negotiable securities which are strictly the property of the State, depots of arms, supplies, and, in general, movable property of the State of such character as to be useful in military operations.

ARTICLE 51. Means of transportation (railways, boats, &c.), as well as land telegraphs and landing-cables, can only be appropriated to the use of the occupant. Their destruction is forbidden, unless it be demanded by military necessity. They are restored when peace is made in the condition in which they then are.

ARTICLE 52. The occupant can only act in the capacity of provisional administrator in respect to real property, such as buildings, forests, agricultural establishments, belonging to the enemy State (Article 6).

It must safeguard the capital of these properties and see to their maintenance.

ARTICLE 53. The property of municipalities, and that of institutions devoted to religion, charity, education, art and science, cannot be seized.

All destruction or wilful damage to institutions of this character, historic monuments, archives, works of art, or

science, is formally forbidden, save when urgently demanded by military necessity.

(b) Private Property

If the powers of the occupant are limited with respect to the property of the enemy State, with greater reason are they limited with respect to the property of individuals.

ARTICLE 54. Private property, whether belonging to individuals or corporations, must be respected, and can be confiscated only under the limitations contained in the following articles.

ARTICLE 55. Means of transportation (railways, boats, &c.), telegraphs, depots of arms and munitions of war, although belonging to companies or to individuals, may be seized by the occupant, but must be restored, if possible, and compensation fixed when peace is made.

ARTICLE 56. Impositions in kind (requisitions) demanded from communes or inhabitants should be in proportion to the necessities of war as generally recognized, and in proportion to the resources of the country.

Requisitions can only be made on the authority of the commander in the locality occupied.

ARTICLE 57. The occupant may collect, in the way of dues and taxes, only those already established for the benefit of the State. He employs them to defray the expenses of administration of the country, to the extent in which the legitimate government was bound.

ARTICLE 58. The occupant cannot collect extraordinary contributions of money, save as an equivalent for fines, or imposts not paid, or for payments not made in kind.

Contributions in money can be imposed only on the order and responsibility of the general in chief, or of the superior civil authority established in the occupied territory, as far as possible, in accordance with the rules of assessment and incidence of the taxes in force.

ARTICLE 59. In the apportionment of burdens relating to the quartering of troops and war contributions, account

is taken of the charitable zeal displayed by the inhabitants in behalf of the wounded.

ARTICLE 60. Requisitioned articles, when they are not paid for in cash, and war contributions are evidenced by receipts. Measures should be taken to assure the *bona fide* character and regularity of these receipts.

III.—PRISONERS OF WAR

A.—RULES FOR CAPTIVITY

The confinement of prisoners of war is not in the nature of a penalty for crime (Article 21): neither is it an act of vengeance. It is a temporary detention only, entirely without penal character.

In the following provisions, therefore, regard has been had to the consideration due them as prisoners, and to the necessity of their secure detention.

ARTICLE 61. Prisoners of war are in the power of the hostile government, but not in that of the individuals or corps who captured them.

ARTICLE 62. They are subject to the laws and regulations in force in the army of the enemy.

ARTICLE 63. They must be humanely treated.

ARTICLE 64. All their personal belongings, except arms, remain their property.

ARTICLE 65. Every prisoner is bound to give, if questioned on the subject, his true name and rank. Should he fail to do so, he may be deprived of all, or a part, of the advantages accorded to prisoners of his class.

ARTICLE 66. Prisoners may be interned in a town, a fortress, a camp, or other place, under obligation not to go beyond certain fixed limits; but they may only be placed in confinement as an indispensable measure of safety.

ARTICLE 67. Any act of insubordination justifies the adoption towards them of such measure of severity as may be necessary.

ARTICLE 68. Arms may be used, after summoning, against a prisoner attempting to escape.

If he is recaptured before being able to rejoin his own army or to quit the territory of his captor, he is only liable

to disciplinary punishment, or subject to a stricter surveillance.

But if, after succeeding in escaping, he is again captured, he is not liable to punishment for his previous flight.

If, however, the fugitive so recaptured or retaken has given his parole not to escape, he may be deprived of the rights of a prisoner of war.

ARTICLE 69. The government into whose hands prisoners have fallen is charged with their maintenance.

In the absence of an agreement on this point between the belligerent parties, prisoners are treated, as regards food and clothing, on the same peace footing as the troops of the government which captured them.

ARTICLE 70. Prisoners cannot be compelled in any manner to take any part whatever in the operations of war, nor compelled to give information about their country or their army.

ARTICLE 71. They may be employed on public works which have no direct connection with the operations in the theater of war, which are not excessive and are not humiliating either to their military rank, if they belong to the army, or to their official or social position, if they do not form part thereof.

ARTICLE 72. In case of their being authorized to engage in private industries, their pay for such services may be collected by the authority in charge of them. The sums so received may be employed in bettering their condition, or may be paid to them on their release, subject to deduction, if that course be deemed expedient, of the expense of their maintenance.

B.—TERMINATION OF CAPTIVITY

The reasons justifying detention of the captured enemy exist only during the continuance of the war.

ARTICLE 73. The captivity of prisoners of war ceases, as a matter of right, at the conclusion of peace; but their liberation is then regulated by agreement between the belligerents.

Before that time, and by virtue of the *Geneva Convention*,

ARTICLE 74. It also ceases as of right for wounded or sick prisoners who, after being cured, are found to be unfit for further military service.

The captor should then send them back to their country.

During the war

ARTICLE 75. Prisoners of war may be released in accordance with a cartel of exchange, agreed upon by the belligerent parties.

Even without exchange

ARTICLE 76. Prisoners may be set at liberty on parole, if the laws of their country do not forbid it.

In this case they are bound, on their personal honor, scrupulously to fulfil the engagements which they have freely contracted, and which should be clearly specified. On its part, their own government should not demand or accept from them any service incompatible with the parole given.

ARTICLE 77. A prisoner cannot be compelled to accept his liberty on parole. Similarly, the hostile government is not obliged to accede to the request of a prisoner to be set at liberty on parole.

ARTICLE 78. Any prisoner liberated on parole and recaptured bearing arms against the government to which he had given such parole may be deprived of his rights as a prisoner of war, unless since his liberation he has been included in an unconditional exchange of prisoners.

IV.—PERSONS INTERNED IN NEUTRAL TERRITORY

It is universally admitted that a neutral State cannot, without compromising its neutrality, lend aid to either belligerent, or permit them to make use of its territory. On the other hand, considerations of humanity dictate that asylum should not be refused to individuals who take refuge in neutral territory to escape death or captivity. Hence the following provisions, calculated to reconcile the opposing interests involved.

ARTICLE 79. A neutral State on whose territory troops or individuals belonging to the armed forces of the belligerents take refuge should intern them, as far as possible, at a distance from the theater of war.

It should do the same towards those who make use of its territory for military operations or services.

ARTICLE 80. The interned may be kept in camps or even confined in fortresses or other places.

The neutral State decides whether officers can be left at liberty on parole by taking an engagement not to leave the neutral territory without permission.

ARTICLE 81. In the absence of a special convention concerning the maintenance of the interned, the neutral State supplies them with the food, clothing, and relief required by humanity.

It also takes care of the *matériel* brought in by the interned.

When peace has been concluded, or sooner if possible, the expenses caused by the internment are repaid to the neutral State by the belligerent State to which the interned belong.

ARTICLE 82. The provisions of the *Geneva Convention* of August 22, 1864 (Articles 10-18, 35-40, 59 and 74 above given), are applicable to the sanitary staff, as well as to the sick and wounded, who take refuge in, or are conveyed to, neutral territory.

In particular,

ARTICLE 83. Evacuations of wounded and sick not prisoners may pass through neutral territory, provided the personnel and material accompanying them are exclusively sanitary. The neutral State through whose territory these evacuations are made is bound to take whatever measures of safety and control are necessary to secure the strict observance of the above conditions.

PART III.—PENAL SANCTION

If any of the foregoing rules be violated, the offending parties should be punished, after a judicial hearing, by the belligerent in whose hands they are. Therefore

ARTICLE 84. Offenders against the laws of war are liable to the punishments specified in the penal law.

This mode of repression, however, is only applicable when the person of the offender can be secured. In the contrary case, the criminal law is powerless, and,

if the injured party deem the misdeed so serious in character as to make it necessary to recall the enemy to a respect for law, no other recourse than a resort to reprisals remains.

Reprisals are an exception to the general rule of equity, that an innocent person ought not to suffer for the guilty. They are also at variance with the rule that each belligerent should conform to the rules of war, without reciprocity on the part of the enemy. This necessary rigor, however, is modified to some extent by the following restrictions:

ARTICLE 85. Reprisals are formally prohibited in case the injury complained of has been repaired.

ARTICLE 86. In grave cases in which reprisals appear to be absolutely necessary, their nature and scope shall never exceed the measure of the infraction of the laws of war committed by the enemy.

They can only be resorted to with the authorization of the commander in chief.

They must conform in all cases to the laws of humanity and morality.

EXTRADITION ¹

As a result of the decision taken at Zürich in 1877,² a report on extradition was presented by Mr. Ch. Brocher at Brussels,³ and another by Mr. Renault at Oxford.⁴ The deliberations of 1879 were without result;⁵ those of the next year⁶ resulted on September 9, 1880, in the adoption of the following *Resolutions of Oxford*.⁷

1. Extradition is an international act in conformity with justice and the interests of States, since it tends to prevent and check effectively violations of penal law.

2. Extradition is effected in a sure and regular manner only pursuant to treaty, and it is desirable that treaties become more and more numerous.

3. Nevertheless it is not treaties alone that make extradition an act in conformity with right, and it may be effected even in the absence of any contractual tie.

4. It is desirable that in every country a law regulate the procedure on the subject as well as the conditions under

¹ *Tableau général*, p. 102.

⁵ *Ibid.*, vol. 3, pp. 286-296.

² *Annuaire*, vol. 2, pp. 51-54.

⁶ *Ibid.*, vol. 5, pp. 106-127; vol. 6, pp. 30-32.

³ *Ibid.*, vol. 3, p. 202.

⁷ *Ibid.*, vol. 5, p. 127.

⁴ *Ibid.*, vol. 5, p. 70.

which individuals demanded as offenders shall be surrendered to the governments with which no treaty exists.

5. The condition of reciprocity in this matter may be required by policy; it is not required by justice.

6. Between countries whose criminal legislations rest upon similar bases and which have mutual confidence in their judicial institutions, extradition of nationals would be a means of assuring good administration of penal justice because it should be considered as desirable that the jurisdiction of the *forum delicti commissi* be so far as possible called upon to render judgment.

7. Even admitting the present practice which withdraws nationals from extradition, no account should be taken of a nationality acquired only since the perpetration of the act for which extradition is asked.

8. The competence of the requesting State should be supported by its own law; it should not be in contradiction with the law of the country of refuge.

9. If there are several requests for extradition for the same act, preference should be given to the State upon whose territory the offense was committed.

10. If the same person is demanded by several States by reason of different offenses, the requested State will in general have regard to the relative gravity of these offenses.

In case of doubt concerning the relative gravity of the offenses, the requested State will take into account priority of demand.

11. As a rule, it should be required that the acts to which extradition applies be punishable by the legislation of the two countries, except in cases where by reason of particular institutions or of the geographical situation of the country of refuge the actual circumstances constituting the offense cannot exist.

12. Extradition being always a grave measure ought to be applied only to offenses of some importance. Treaties should enumerate them with precision; their provisions on this subject naturally vary according to the respective situation of the contracting countries.

13. Extradition cannot take place for political acts.

14. It is for the requested State to decide whether in the circumstances the act on account of which extradition is demanded has a political character.

In considering this question it should be guided by the two following ideas:

(a) Acts combining all the characteristics of crimes at common law (murders, arsons, thefts) should not be excepted from extradition by reason only of the political purpose of their authors;

(b) In passing upon acts committed during a political rebellion, an insurrection, or a civil war, it is necessary to inquire whether they are excused by the customs of war.

15. In any case, extradition for crimes having the characters both of political and common law crime ought not to be granted unless the requesting State gives the assurance that the person surrendered shall not be tried by extraordinary courts.

16. Extradition ought not to be applied to the desertion of military persons belonging either to the land or to the sea forces, nor to purely military offenses.

The adoption of this rule does not prevent handing over sailors belonging either to the service of the State or to the merchant marine.

17. A law or treaty of extradition may be applied to acts committed before it came into force.

18. Extradition should be effected through the diplomatic channel.

19. It is desirable that the judicial authority in the country of refuge should be invoked to pass upon the request for extradition after hearing both sides.

20. The requested State should not grant extradition if, according to its public law, the judicial authority has decided that the request should not be allowed.

21. The examination should have for its object the general conditions of the extradition and the probability of the accusation.

22. The government which has obtained an extradition for a given act is bound, in the absence of a treaty to the contrary, not to allow the surrendered person to be tried or punished except for that act.

23. The government which has granted an extradition can afterwards consent to the trial of the surrendered person for acts other than that for which he was surrendered, if they are such as might support extradition.

24. The government which has a person in its power in consequence of an extradition cannot deliver him to another government without the consent of that which surrendered him to it.

25. The act issued by the judicial authority declaring extradition admissible must set out the circumstances under which extradition shall take place and the acts for which it has been granted.

26. The person extradited should be allowed to claim, as a preliminary exception before the tribunal called upon to give final judgment, the irregularity of the conditions under which his extradition has been granted.

INTERNATIONAL REGULATIONS CONCERNING PRIZES ¹

After having formulated its collective opinion upon the *treatment of private property on the sea* and upon the *opportunity to create international courts of prize*, the Institute, at its session at Zürich, deemed it important to study in their entirety the reforms which could be made in the present system of courts and administration of justice in prize matters. It therefore instructed its Bureau to form a committee for the purpose of considering:

1. General principles which might be formulated in treaties regarding the law to be applied in prize cases;

2. A system for the organization of international prize courts, giving to the interested individuals of the neutral or enemy State the broadest guaranties of an impartial judgment;

3. A common procedure to be adopted for the judgment of prize cases.

¹ *Tableau général*, p. 194.

Mr. Bulmerincq was named reporter of the committee,¹ and gave himself up to an extensive piece of work, forming a real treatise upon prize matters. This work being only partly completed at the time of the session in Paris, the Institute, upon the suggestion of the reporter himself, postponed the examination thereof to a later session;² it was still unable to consider it at Oxford.³

September 3, 1881, the committee met at Wiesbaden to discuss the *Draft of international regulations for prizes*, which Mr. Bulmerincq had just finished drawing up.⁴

The Institute, in its turn, began the examination at the plenary session at Turin, September 13, 1882, and adopted the first 62 articles from the 13th to the 15th of the same month.⁵ At Munich, in the plenary sessions of September 6 and 7, 1883, the Institute adopted Articles 63 to 84.⁶

I.—GENERAL PROVISIONS

ARTICLE 1. The war vessels and military forces of belligerent States are alone authorized to exercise the law of prize, that is to say, the stopping, visit, search and seizure of merchant vessels during a naval war.

ARTICLE 2. Privateering is forbidden.

ARTICLE 3. The arming of privateers is still permitted as a method of reprisal against belligerents which do not respect the principle contained in Article 2. In this case it is forbidden to give commissions to foreigners.

ARTICLE 4. Private property is inviolable if both parties so treat it, and except in the cases enumerated in Section 23.

ARTICLE 5. The right to take prize does not accrue to belligerents until after the commencement of hostilities. It ceases during an armistice and with the preliminary negotiations for peace. So far as neutrals are concerned the right to take prize cannot be exercised until the belligerents have notified the neutrals that war exists.

ARTICLE 6. The right to take prize cannot be exercised as to vessels and cargoes until they have had knowledge of the existence of the war. There is no basis for the taking of prize if the master of the vessel or owner of the cargo proves that he did not have such knowledge.

¹ *Annuaire*, vol. 2, p. 121.

⁴ *Ibid.*, vol. 6, pp. 12, 105, 129, 139, 164, 174.

² *Ibid.*, vol. 3, p. 109.

⁵ *Ibid.*, pp. 177, 213.

³ *Ibid.*, vol. 5, p. 131.

⁶ *Ibid.*, vol. 7, pp. 185-190.

ARTICLE 7. If the belligerent State which may order the merchant vessels of the enemy to leave its ports, permits them to discharge the merchandise on board before leaving, and to load with other merchandise, it should fix exactly the period granted to them for this purpose, and should make it known to the public. In this case the belligerent cannot permit the exercise of the right of seizure as prize against these vessels before the expiration of the said period.

ARTICLE 8. The right to take prize cannot be exercised except in the waters of a belligerent and on the high seas; it cannot be exercised in neutral waters¹ or in waters which are expressly protected from acts of war by treaty. Neither can a belligerent continue within the latter two classes of waters an attack already begun.

ARTICLE 9. Seizures made in neutral waters, or in waters protected by treaty from acts of war, are invalid. The vessels or objects captured should be returned to the neutral State or States bordering the water to be restored by the latter to the original owner. Furthermore, the State of the captor is responsible for all damages and loss.

II.—SPECIAL PROVISIONS

1.—*Stopping*

ARTICLE 10. In the cases provided for in these regulations, war vessels of a belligerent State are authorized to stop any merchant vessel or private vessel which they may meet in the waters of their State, or on the high seas, and elsewhere than in neutral waters or waters withdrawn from the field of acts of war.

ARTICLE 11. The war vessel of the belligerent, in order to invite the merchant vessel to stop, shall fire a shot from a cannon, as a summons, using either blank shot, or powder

¹ The text printed as definitive in the *Annuaire*, vol. 6, p. 213, omits mention of neutral waters. This omission is evidently an error in printing, as is seen by comparing Article 8 of the draft of Mr. Bulmerincq and that of Wiesbaden, at pages 106 and 165 of the same volume of the *Annuaire*, the vote on Article 8, at page 187, and especially the end of this article and the following article, where the two kinds of waters are referred to. The omission has been supplied in the text printed in the *Annuaire*, vol. 9, p. 219.

only. Before, or at the same time, the war vessel shall raise its flag, and in the night time shall place a lantern above it. Upon this signal the vessel which has been stopped shall raise its flag and heave to to await the visit. The war vessel shall then send to the vessel which has been stopped a boat manned by an officer accompanied by a sufficient number of men, of whom but two or three, with the officer, shall board the vessel which has been stopped.

ARTICLE 12. The vessel which has been stopped can never be required to send its master or any person whatever on board the war vessel to show his papers or for any other purpose.

ARTICLE 13. The merchant vessel is obliged to stop; it is forbidden to continue on its course. If it does continue the war vessel has the right to pursue it and stop it by force.

2.—*Visit*

ARTICLE 14. The right of visit is exercised in belligerent waters, so far as they are not protected from acts of war by treaty, and on the high seas; it is exercised as to merchant vessels, but not as to war vessels of a neutral State, or as to other vessels ostensibly belonging to such State, or as to neutral merchant vessels convoyed by a war vessel of their State.

ARTICLE 15. The right of visit is exercised for the purpose of either verifying the nationality of a vessel which has been stopped, or for ascertaining whether the vessel is engaged in transportation which has been forbidden, or for ascertaining whether there has been a violation of a blockade.

ARTICLE 16. When neutral merchant vessels are convoyed, they shall not be visited, if the commander of the convoying vessel sends to the vessel of the belligerent which has stopped it, a list of the convoyed vessels, and a declaration signed by him showing that they do not carry any contraband of war, and showing the nationality and destination of the convoyed vessels.

ARTICLE 17. When the vessel to be visited is a mail boat, it shall not be visited if the officer of the government

whose flag it flies, who is on board the ship, declares in writing that the mail ship is carrying neither dispatches nor troops for the enemy, nor contraband of war for the account of, or destined to, the enemy.

ARTICLE 18. Visit, to which every vessel not exempted therefrom by the provisions of Articles 16 and 17 should submit, begins with an examination of the papers of the vessel which has been stopped. If these papers are found to be in proper form or if there is nothing to arouse suspicion, the vessel which has been stopped may continue its voyage. Neutral vessels destined for scientific expeditions may also continue their voyages provided they observe the laws of neutrality.

3.—*Search*

ARTICLE 19. If the vessel's papers are not in proper form, or if upon the visit being made there appears ground for suspicion, as provided in the following article, the officer who makes the visit is authorized to proceed to search the vessel. The vessel may not oppose this; if it nevertheless does so, search may be made by the use of force.

ARTICLE 20. There is ground for suspicion in the following cases:

1. When the vessel which has been stopped does not heave to at the invitation of the war vessel;

2. When the vessel which has been stopped opposes a visit to the secret places supposed to conceal the ship's papers or contraband of war;

3. When there are two sets of papers, or false, or altered, or secret papers, or insufficient papers, or no papers at all;

4. When the papers have been thrown into the sea or destroyed in any other fashion, especially if these acts have occurred after the vessel could discover the approach of the war vessel;

5. When the vessel which has been stopped is sailing under a false flag.

ARTICLE 21. Persons charged with making the search

cannot open or break into closets, lodgings, trunks, cash boxes, casks, half casks, or other receptacles which may contain part of the cargo, nor arbitrarily examine articles forming part of the cargo which are spread about openly on the vessel.

ARTICLE 22. In the cases where there are grounds for suspicion as mentioned in Article 20, if there is no resistance to the search the officer who proceeds to make it should have the containers opened by the master and make the examination of the cargo openly on the vessel in the presence of the master.

4.—*Seizure*

ARTICLE 23. Seizure of a vessel or cargo, enemy or neutral, can occur only in the following cases:

1. When the result of the visit shows that the papers are not in proper form;

2. In all the cases where the grounds for suspicion mentioned in Article 20 exist;

3. When it is discovered by the visit or search that the vessel which has been stopped is transporting articles for the account of the enemy, or destined to the enemy;

4. When the vessel is taken in the act of violating a blockade;

5. When the vessel participates in the hostilities or is intended to take part therein.

5.—*Nationality of the Vessel, Cargo and Crew*

ARTICLE 24. The nationality of the vessel, its cargo and crew should be shown in the ship's papers found upon the vessel which has been seized, provided however that there may always be a subsequent production before the prize courts.

ARTICLE 25. The question as to whether the conditions as to nationality are fulfilled is decided in accordance with the law of the State to which the vessel belongs.

ARTICLE 26. The legal document showing the sale of an enemy vessel made during the war must be perfect, and the

vessel should be registered before it leaves the port of departure, and in accordance with the law of the country whose nationality it acquires. The new nationality cannot be acquired by a vessel which is sold during a voyage.

ARTICLE 27. The ship's papers required by international law are the following:

1. Documents relating to the ownership of the vessel;
2. Bill of lading;
3. List of the crew, with an indication of the nationality of the master and the crew;
4. Certificate of nationality, if the documents mentioned under 3 do not cover it;
5. Log-book.

ARTICLE 28. The documents listed in the preceding article should be drawn up clearly and without ambiguity in order to be adequate proof.

ARTICLE 29. If, in ascertaining whether it is a case for seizure, there is evidence as to the nationality or destination of the vessel, or as to the nature of the cargo, or as to the nationality of the master and crew, depending upon which point is at issue, and one of the ship's papers ordinarily relating to this question is lacking, the mere absence of this paper is not a ground for seizure, provided however that the ship's other papers are in perfect agreement on the point in question.

6.—*Transportation Forbidden During the War*

ARTICLE 30. During the war objects capable of being immediately employed for war purposes and transported by neutral or enemy national merchant vessels for the account of or destined to the enemy (contraband of war) are subject to seizure. The belligerent governments shall determine in advance, in each war, the objects which they will consider contraband.

ARTICLE 31. The contraband of war must be actually on board at the time the search is made.

ARTICLE 32. Objects necessary for the defense of the crew and ship are not considered contraband of war unless

the vessel has made use thereof to resist being stopped, or to resist visit, search or seizure.

ARTICLE 33. The vessel which has been stopped because it carries contraband of war may continue its voyage if its cargo is not composed exclusively or principally of contraband of war, if the master is ready to deliver to the belligerent vessel the contraband of war, and if the commander of the cruiser believes that the unloading may take place without difficulty.

ARTICLE 34. In the same category as transportation of contraband of war (Article 30) is transportation of troops for military operations by the enemy on land and sea, as well as transportation of official correspondence of the enemy by neutral or enemy national merchant vessels.

7.—*Blockade*

ARTICLE 35. A blockade which has been declared and notice thereof given is effective when there exists a real danger in entering or leaving a blockaded port, because of the fact that a sufficient number of war vessels are stationed there, or are but temporarily absent from such station.

ARTICLE 36. The declaration of blockade should determine not only the limits of the blockade by latitude and longitude, and the exact moment when the blockade will begin, but also, in the proper case, the period which may be allowed merchant vessels to unload, reload and leave the port (Article 7).

ARTICLE 37. The officer in charge of the blockade should also transmit a notice of the declaration of blockade to the authorities and consuls of the blockaded place. The same formalities shall be observed when a blockade which has ceased to be effective has been reëstablished and when a blockade is extended to new points.

ARTICLE 38. If the blockading vessels leave their position for any other reason than stress of weather, the blockade is considered as raised; it should then be again declared and notice again given.

ARTICLE 39. Merchant vessels are forbidden to enter or leave the places and ports which are in a state of effective blockade.

ARTICLE 40. However, merchant vessels are permitted to enter, in case of stress of weather, the blockaded port, but only after the officer in charge of the blockade has ascertained that the *force majeure* continues.

ARTICLE 41. If it is evident that a merchant vessel approaching a blockaded port did not know of the existence of a blockade which has been declared and is effective, the officer in charge of the blockade shall notify the vessel of it, entering the notice in the vessel's papers on board the ship which has been so notified, making the entry at least in the certificate of nationality and in the log-book, noting the date of the notice, and shall invite the vessel to leave the blockaded port, and authorize it to continue its voyage to an unblockaded port.

ARTICLE 42. Ignorance of the blockade is permissible when the time which has elapsed since the declaration of the blockade is too short for the vessel which has already begun its voyage and has attempted to enter the blockaded port, to know of the blockade.

ARTICLE 43. A merchant vessel shall be seized for violation of blockade when it has attempted by force or strategy to penetrate the line of blockade, or when, after having been sent back once, it tries again to enter the same blockaded port.

ARTICLE 44. Seizure on the ground of violation of blockade shall not be justified by the fact that a merchant vessel has gone in the direction of the blockaded port, or by the character of the lading alone, or by the mere fact that the destination of the vessel is such a port. In no case can the doctrine of continuous voyage justify condemnation for violation of blockade.

8.—*Formalities Which Follow Seizure*

ARTICLE 45. After seizure the captor shall close the hatches and the powder magazines of the vessel which has

been seized, and seal the same. He shall do the same with the cargo after it has been inventoried.

ARTICLE 46. No part of the cargo shall be sold, discharged, disarranged nor, in general, taken away, consumed or damaged.

If however the cargo consists of things which easily spoil, or if the articles are damaged, the captor shall take the most suitable measures to preserve the cargo, with the consent and in the presence of the master, as well as in the presence of a consul of the nationality of the vessel which has been seized, if there is one to be found in the neighborhood of the place of capture. The commander of the captor vessel shall, for this purpose, proceed to an inspection of the cargo.

ARTICLE 47. The captor shall draw up an inventory of the vessel which has been seized and its cargo, as well as a list of the persons found on board, and shall put upon the vessel which has been seized a sufficient crew to ensure possession of the vessel and maintenance of order thereon.

ARTICLE 48. The captor shall seize all of the ship's papers, documents and letters which may be found on the ship. These papers, documents and letters shall be gathered together in a parcel under the seals of the commander of the war vessel and of the master of the vessel which has been seized; an inventory of these papers, documents and letters shall be drawn up and the commander of the war vessel shall declare in writing in the *procès-verbal* that these are *all* the papers found upon the vessel; there shall also be added a note showing what papers were lacking at the time of seizure and the state in which the papers seized were found, especially if they appear to have been altered.

ARTICLE 49. The captor shall draw up a *procès-verbal* of the seizure as well as of the state of the vessel and cargo, mentioning therein the hour and day of the seizure; in what latitude it took place; the grounds therefor; the name of the vessel and of the master; the number of men in the crew; under what flag the vessel was sailing at the time it was stopped and whether there was resistance on the part of the vessel, and the nature of its resistance. The inventories

of the vessel, cargo, and ship's papers, shall be added to the *procès-verbal*, with a note therein that the inventories have been drawn up. A copy of the *procès-verbal* shall be transmitted to the superior military authority of the vessel which has been captured.

ARTICLE 50. In the following cases the captor will be permitted to burn or sink the enemy¹ vessel which has been seized, after having sent the persons found on board to the war-ship, and discharged as much as possible of the cargo, and after the commander of the captor vessel has taken charge of the ship's papers and important objects for use in judicial proceedings and settlement of claims of owners of the cargo for damages and interest:

1. When it is impossible to keep the vessel afloat, on account of its bad condition, in a rolling sea;

2. When the vessel sails so poorly that it cannot follow the war vessel and may easily be retaken by the enemy;

3. When the approach of a superior force of the enemy arouses the fear that the vessel may be retaken;

4. When the war vessel is unable to put a sufficient crew upon the vessel which has been seized without diminishing too greatly the crew necessary to its own safety;

5. When the port to which it would be possible to take the vessel which has been seized is too far away.

ARTICLE 51. A *procès-verbal* shall be drawn up concerning the destruction of the vessel which has been seized and the grounds therefor; this *procès-verbal* shall be transmitted to the superior military authority and to the nearest court of inquiry, and the latter shall examine, and if necessary complete, the documents relating thereto and transmit them to the prize court.

ARTICLE 52. The only persons on board the ship which has been seized who shall be considered prisoners of war are those who form part of the military force of the enemy, and

¹ The word 'enemy' was omitted by mistake from the definitive text (*Annuaire*, vol. 6, p. 221), but the Institute made formal rectification of the article at its Heidelberg session, *ibid.*, vol. 9, pp. 200, 202.

those who have assisted the enemy or are suspected of having assisted the enemy.

ARTICLE 53. The master, the supercargo, the pilot and other persons whom it will be necessary to hear in order to ascertain the facts, shall be temporarily retained on board. These persons are not authorized to quit the vessel, after giving their depositions, except at the order of the court of inquiry.

ARTICLE 54. The persons found and kept on board shall be fed, and in case of necessity, clothed and cared for by the government of the State to which the captor vessel belongs. The master shall furnish security for the expenses resulting therefrom, which shall be repaid according to the judgment.

ARTICLE 55. The members of the crew shall be allowed to keep their personal effects.

ARTICLE 56. The captor may not disembark in waste and uninhabited countries the members of the crew who are not needed at the inquiry and who must be sent away immediately for lack of space upon the captor vessel or lack of provisions. But the captor is permitted to transfer the men to neutral or allied vessels which he may meet, to be disembarked in cultivated and inhabited territories.

ARTICLE 57. The captain of the captor vessel is responsible for the good treatment and entertainment of the persons found on board the vessel seized by the crew of the captor vessel and by the crew which mans the vessel seized; he should not permit even those persons who are prisoners of war to be employed at humiliating occupations.

9.—*Taking the Vessel Seized into a Seaport.*

ARTICLE 58. The vessel seized shall be taken to the nearest port of the captor State or to a port of an allied Power where a court of inquiry may be found to examine into the matter of the vessel seized.

ARTICLE 59. The vessel seized may not be taken to the port of a neutral Power except on account of some peril of the sea, or when the war vessel may be pursued by a superior enemy force.

ARTICLE 60. When, on account of a peril of the sea, the war vessel has taken refuge with the vessel seized in a neutral port, they must quit the port as soon as possible, after the tempest has passed. The neutral State has the right and the duty to inspect the war vessel and the vessel seized during their stay in the port.

ARTICLE 61. When the war vessel has taken refuge with the vessel seized in a neutral port, because it is pursued by a superior enemy force, the prize must be released.

ARTICLE 62. The vessel seized and the cargo shall be preserved intact so far as possible during their voyage to the port; the cargo shall be closed and sealed, except in case the unsealing and opening of the cargo may be deemed necessary in the interest of the preservation thereof, and the master consents thereto.

10.—*Organization and Procedure of the Court of Inquiry in Prize Matters in the Port of Arrival*¹

ARTICLE 63. The court of inquiry, in the port where the seized vessel arrives, is composed of members of the magistracy. The court hears the naval officers and customs employees as experts.

ARTICLE 64. Representatives of the captor State and the State of the seized vessel are present during the sessions of the court. The captured person or persons are ordinarily represented by the consul of their respective States, or if there is not one in the port, by the consul of a friendly neutral State. In the absence of such a consul, the captured persons are represented by agents chosen by them and acting under duly executed powers of attorney.

ARTICLE 65. The officer in charge of the vessel seized delivers it, as well as its cargo and crew, to the court of inquiry, and the latter issues orders as to the vessel, its cargo and crew.

ARTICLE 66. The officer in charge of the vessel seized

¹ Articles 63 to 84 were adopted at Munich, September 6 and 7, 1883. *Annuaire*, vol. 7, pp. 185-190.

shall deliver to the court within twenty-four hours after the arrival of the vessel in the port:

1. The *procès-verbal* drawn up after the seizure (Article 49);

2. The papers placed in a sealed envelope after the seizure (Article 48);

3. The inventories of the vessel, the cargo and the papers, documents and letters found on board the vessel, which were drawn up after the seizure (Articles 47 and 48);

4. The list of persons found on board, drawn up after the seizure (Article 47);

5. A report of the voyage to the port of arrival.

ARTICLE 67. At the same time the officer in charge of the vessel seized certifies that the papers are the same ones found on board the vessel seized and that they are in the condition in which they were found on board. In a case where no papers were found, the facts should be stated.

ARTICLE 68. The officer in charge of the vessel seized brings before the court for hearing at least the captain or master, the supercargo and the pilot.

ARTICLE 69. The court of inquiry, after having assured itself in the presence of the officer in charge of the vessel seized, and of the captured persons, the captain or master, the pilot and supercargo, that the seals attached to the ship, the cargo and elsewhere, are intact, then proceeds, in the presence of the same persons, to unseal and open the sealed envelope which has been delivered to it; it records and makes a list of the papers found therein and of the persons and inventories of the vessel and cargo, using as a basis the lists and inventories drawn up after the seizure to check and complete, if necessary, the later lists and inventories; it also ascertains whether the persons are present, and verifies the result.

ARTICLE 70. The officer in charge does not leave the vessel seized before turning it over, with its cargo, to a keeper designated by the court of inquiry, or before this court has affixed its seals. After having accomplished all the

acts which are prescribed, the officer in charge ceases to be responsible for the vessel, cargo and crew, and the responsibility passes to the keeper, who delivers a receipt to the officer in charge for the vessel, cargo and crew.

ARTICLE 71. The keeper appointed by the court of inquiry accepts delivery of the vessel seized, and its cargo, and takes charge of urgent repairs to the vessel, the preservation of the cargo, as well as the maintenance of the persons remaining on board.

ARTICLE 72. The vessel seized is preserved as well as possible and the captor State bears the expense thereof until final judgment. The court of inquiry, however, upon the advice of experts, places on public sale, merchandise which is subject to deterioration and the vessel if it cannot be preserved because of its bad condition, or because its actual value is not consonant with the expense which its preservation would entail. The public sale is announced both in the place where it is to take place and also, so far as the vessel seized is concerned, in the domicile of the owner of the vessel. Finally, by virtue of a decision of the court and the consent of the captor State, the court delivers the vessel, after appraisal, to a claimant who proves that he is the lawful owner, provided that he deposits with the court the amount of the appraised value. A similar deposit is made of the proceeds of a public sale.

ARTICLE 73. The court releases a captured vessel which is not suspected, retaining the cargo which is suspected, in case the regulations require the condemnation of the cargo alone.

ARTICLE 74. Objects which cannot be seized in any case are separated from the cargo; they are delivered to the lawful owners. If all the interested parties do not consent thereto, he who receives the objects should deposit with the tribunal the appraised value thereof, as determined by experts. Under the same condition and with the consent of the parties, the court delivers the cargo to the lawful owner. The claimants bear the expenses of care and insurance of the cargo not delivered, until the final decision.

ARTICLE 75. If the court deems it necessary to discharge the cargo to preserve it, experts named and sworn by the court inventory it in the presence of the parties, and place it in a warehouse closed and sealed with the seals of the representative of the captor State, of the captured persons and of the tribunal. The objects which the experts declare liable to early deterioration are sold at public sale under order of the court.

ARTICLE 76. *Procès-verbaux* are drawn up concerning the taking of possession of the vessel and cargo, as well as concerning the discharge, storing, closing, sealing and delivery; the members of the court and the parties present sign these *procès-verbaux*.

ARTICLE 77. Of the persons found on board the vessel seized, the members of the enemy military force are immediately sent as prisoners of war to the military authorities of the same or the nearest town, and these authorities place them at the disposition of the court to be heard when demanded by it. Those who have assisted the enemy or are suspected of having assisted the enemy are delivered to the military authorities. The other persons found on board the vessel remain there under surveillance during the period fixed by the court, if and so long as the court of inquiry deems their depositions necessary. If the vessel is sold or destroyed in the port of arrival, those who would have been obliged to remain on board the vessel shall remain under arrest by the authorities until a decision of the court. When the inquiry has been concluded the captain or master and the supercargo are not set at liberty unless bond *judicio sisti* is furnished.

ARTICLE 78. The court of inquiry has for its principal duty the complete exposition of the facts, seeking particularly to know in what manner the vessel was stopped, how visit, and eventually search, as well as seizure were made, and whether the captor has acted in a lawful manner, and the grounds on which seizure was made. If the captor found no papers on board the vessel seized, or if those found were incomplete, the court questions the persons found on board

and secures information from the owners of the vessel and cargo, or, if they are not known, by means of notices inserted in newspapers of large circulation, in which the court makes known the fact of seizure with the exact description of the vessel and cargo, and invites interested persons to prove their rights therein within a given period.

ARTICLE 79. The tribunal, after having ascertained the facts in a preliminary way, invites the captor State and the lawful claimants to be present, within a period of four weeks at least, at the further sessions of the court and to present their claims in person or through attorneys duly authorized for this purpose. The invitation comprises a succinct *résumé* of the facts as provisionally ascertained. In the meantime the officer in charge of the vessel seized represents the captor State, and the captain or master, or the supercargo, or the appropriate consul, represents the captured persons. The court designates trustees to take care of the interests of claimants not represented.

ARTICLE 80. The court, after having examined the journals, documents and papers sent to it by the officer in charge of the vessel seized (Article 66), immediately begins the hearing of the persons who were on board. It is obliged to hear the officer in charge of the vessel, as well as the captor, in cases where the two are not one and the same person, also the captain or master, the pilot, and the supercargo when the captain or the master himself is not charged with the supervision of the cargo.

ARTICLE 81. The representatives of the parties have the right:

1. To be present at all hearings in the case;
2. To present in writing or orally, requests relative to the communication or production of documents, as well as the argument and submission of the case for judgment, or to hasten the proceeding when the court delays in beginning or when there have been delays in the course of the examination;
3. To request a hearing of persons whom the court has

not interrogated and to present questions to be put to the persons interrogated.

ARTICLE 82. The examination of the case shall not begin until the captor State and the claimants are represented. The court advises these representatives fully of all of the formalities complied with up to that time and communicates the inventories and other documents to the interested parties, in order that they may learn the contents thereof.

ARTICLE 83. When the inquiry has been concluded, the court makes this fact known and asks the parties if they desire to add anything, and what requests they still have to present. After having heard the requests of the parties and examined into the question as to whether the record of the inquiry is complete, the court submits the record thereof to the interested parties, then invites the delegate of the captor State to present, within two weeks at the longest, a final demand which is communicated to the claimants in order that they may reply thereto within the same period. After receiving the two declarations, or after the expiration of the periods fixed for their receipt, in case one or the other has not been received, the court proposes an amicable adjustment to the parties, and only when such an arrangement is unsuccessful within a period of two weeks, does the court transmit the complete record and all documents which have been submitted to it from the beginning, to the court of prize, notice of such transmission being given to the captor State and claimants.

ARTICLE 84. A *procès-verbal* is drawn up covering all of the formalities which have been observed in the examination. The persons interrogated sign their depositions.¹

MARINE INSURANCE²

Following the decision of the Institute at Turin to study in succession matters of commercial law in which uniformity is especially desirable, and particularly the principal subjects of maritime law, Mr. Sacerdoti

¹ For Articles 85-122, see *post*, p. 71.

² *Tableau général*, p. 87.

was instructed to consider especially marine insurance. At the session of Munich (1883) he presented a report and conclusions in detail; but the Institute, at the request of the reporter himself, limited itself to adopting three resolutions on September 7, 1883, establishing principles to serve as guides to the committee in its future studies. These resolutions were as follows:¹

1. It is not expedient to draw up a model policy, complete in all details.

2. Only provisions either of a prohibitory or of a mandatory character, or those which although simply interpretative are of such importance that uniformity is desirable, shall be selected from the above-mentioned conclusions, or others, for insertion in the draft to be made and submitted at the next session.

3. The committee shall also consider the conflict of laws relating to commercial maritime law.²

INTERNATIONAL RIVERS—THE KONGO³

As early as the session at Paris, 1878, Mr. Moynier had called the attention of the Institute to the navigation of the Kongo and to the necessity of subjecting it to international supervision.⁴ Mr. de Laveleye, in his turn, in the *Revue de droit international*,⁵ had championed the idea of neutralization or international regulation for this river. This idea of neutralization found an opponent in Sir Travers Twiss.⁶ At the session of Munich, Mr. Moynier read to the Institute on September 4, 1883, a carefully studied memoir,⁷ which was referred during the same session to a committee. On the seventh of the same month this committee, through Mr. Arntz, its reporter, proposed the following *Conclusion*, which was adopted:⁸

The Institute of International Law expresses the *vœu* that the principle of freedom of navigation for all nations be applied to the Kongo River and its tributaries, and that all Powers come to an agreement concerning the measures suitable for the prevention of conflicts between civilized nations in equatorial Africa.

¹ *Annuaire*, vol. 7, pp. 100-123.

² See *post*, p. 65.

³ *Tableau général*, p. 147.

⁴ *Annuaire*, vol. 3, p. 155.

⁵ Vol. xv, 1883, p. 254.

⁶ *Ibid.*, pp. 437, 547.

⁷ *Annuaire*, vol. 7, p. 250.

⁸ *Ibid.*, p. 278.

The Institute instructs its Bureau to transmit this *vœu* to the different Powers, adding thereto, merely as a matter of information, the memorandum presented by one of its members, Mr. Moynier, at the session of September 4, 1883.

COMMUNICATION OF INTERNATIONAL TREATIES ¹

At the session of Munich (1883) the Institute, at the suggestion of Mr. von Martitz, appointed a committee to study the question: "By what means may a more universal, prompt and uniform publication of treaties and conventions between the various States be secured?" ²

At the session of Brussels (1885) Mr. von Martitz communicated to the meeting a memoir upon this question; this memoir appeared in the *Revue de droit international*.³ At the suggestion of the same member the Institute adopted in plenary session on September 11, 1885, a *vœu* in these terms: ⁴

The Institute of International Law expresses the *vœu* that the high governments of the various States may be willing to see that treaties and international acts concluded by them, the publication of which is not forbidden by reasons of State or of political expediency, may be collected and published in special collections, either officially, or through the enterprise of competent men, encouraged and fostered by the States.

The Institute also desires that these publications be made as general and complete as possible, in order that they may furnish the science of international law with perfect and exact knowledge as to the legal relations actually in force between the different States.

The Institute instructs its Bureau to transmit this *vœu* to the high governments, inclosing therewith, as a matter of information, the memoir which has been presented to the Institute by one of its members.⁵

¹ *Tableau général*, p. 22.

² *Annuaire*, vol. 7, p. 285.

³ Vol. xviii, p. 168.

⁴ *Annuaire*, vol. 8, p. 232.

⁵ For subsequent action of the Institute on this subject, see *post*, pp. 93, 97.

MARITIME LAW AND MARINE INSURANCE ¹

At the session of Brussels in 1885, Mr. Sacerdoti presented another report concerning *Marine insurance*, and Mr. Lyon-Caen submitted a report on *Conflict of laws on the subject of maritime law*. The Institute voted on these matters jointly at the session of September 11, 1885, and adopted the two drafts which accompanied the reports. Here is the text of these three documents:

I.—RESOLUTION OF SEPTEMBER 11, 1885 ²

The Institute of International Law, assembled in plenary session at Brussels, September 11, 1885,

Considering its decisions and previous labors, and especially:

1. The preparatory work at the session of Munich, 1883, the *questionnaire* and the first report drawn up by Mr. Sacerdoti; ³

2. The vote taken and the principles adopted at the session of Munich; ⁴

3. The second report upon *Marine insurance* presented by Mr. Sacerdoti;

4. The report upon the *Conflict of laws relating to maritime law*, presented by Mr. Lyon-Caen;

After having examined, discussed and amended the conclusions of Messrs. Sacerdoti and Lyon-Caen at the plenary sessions of September 10 and 11, 1885, thanks the honorable authors of these works for the services which they have each rendered to the uniformity of law and to international law in these important matters, decides that the amended drafts, as above stated, shall be printed under the supervision of the Bureau and recommended to the special consideration of the governments, as well as to scientific bodies which are considering the same subjects, and more particularly to the Congress of Commercial Law which will meet shortly at Antwerp.

¹ *Tableau général*, p. 87.

² *Annuaire*, vol. 8, p. 123.

³ *Ibid.*, vol. 7, p. 100.

⁴ *Ibid.*, p. 122.

II.—DRAFT OF INTERNATIONAL REGULATION OF CONFLICT OF LAWS RELATING TO MARITIME LAW

The *law of the flag* of the vessel should determine:

1. What public formalities must be complied with in transferring property;
2. Who are the creditors of the owner of the vessel who have not the right to follow the same in case it is transferred;
3. Whether the vessel may or may not be mortgaged;
4. What public formalities must be complied with in the case of maritime mortgages;
5. What debts are guaranteed by maritime liens;
6. What is the priority of liens upon the vessel;
7. What formalities must be observed by the captain who borrows on a bottomry bond in the course of the voyage;
8. What is the extent of the responsibility of the owner of the vessel on account of the acts of the captain and crew, especially whether he may free himself by abandoning the vessel and freight;
9. What sort of damage should constitute a general damage to which the interested parties should contribute (general average);
10. How the amount to be contributed should be made up, in case of general average, particularly with regard to the amount to be contributed by the owner of the vessel.

III.—DRAFT OF UNIFORM LAW ON MARINE INSURANCE

ARTICLE 1. Any interest capable of being stated in terms of money, which a person may have in the preservation of a vessel or its cargo from the dangers of maritime navigation, may be the subject of marine insurance. For instance, insurance may be taken out to cover freight charges on merchandise, or the fares of passengers, marine profit on the loan on the bottomry bond, profit which may be made from the merchandise, and the right to a commission to be received. The salaries of sailors which may be excepted by the particular laws of each State are excepted here.

ARTICLE 2. Insurance does not cover as a matter of law the risks of war. It applies, unless there is a clause to the contrary, to the breaches of trust and misdeeds of the captain and the crew. It does not apply, however, to a breach of trust by the captain in the interest of the insured, unless there is a clause in the policy expressly extending it to this case.

ARTICLE 3. Insurance does not cover as a matter of law the risks arising from the rights of third parties.

ARTICLE 4. If the value of the interest insured has been previously estimated by experts agreed upon by the parties, the insurer cannot object to this estimate except in case of fraud.

ARTICLE 5. Insured objects can be abandoned in case of shipwreck, capture as prize, seizure by order of a Power, non-navigability from the fortune of the sea, only when the loss or deterioration of the insured objects equals three-quarters of their value, and when nothing has been heard for the periods fixed in Article 866 of the German Code of Commerce. The still further restriction of cases of abandonment is reserved for the particular laws of each State.

ARTICLE 6. In case of sale of the thing insured, the insurance runs in favor of the new owner, when he has been subrogated to the rights and obligations of the preceding owner toward the insurers, unless there is a clause to the contrary in the policy.

COMMUNICATION OF FOREIGN LAWS¹

At the suggestion of Messrs. Norsa and Pierantoni a committee was formed at the session of Munich (1883) for the purpose of seeking means to be submitted to governments to facilitate the communication of foreign laws and to ensure the proof of such laws before courts.²

At the session of Brussels (1885) Mr. Norsa presented a report upon the methods to be submitted to governments to facilitate the communication

¹ *Tableau général*, p. 19.

² *Annuaire*, vol. 7, p. 285.

of foreign laws; ¹ this report was accompanied by a *Draft of International Agreement* consisting of twenty-two articles.² The meeting was unable to support this draft in its entirety and directed Mr. Asser to draw up several propositions, which were adopted at the plenary session of September 12, 1885.

These propositions are as follows: ³

PROPOSITIONS FOR AN INTERNATIONAL AGREEMENT, FOR THE
PURPOSE OF ESTABLISHING A PERMANENT INTERNATIONAL
COMMITTEE, TO FACILITATE THE COMMUNICA-
TION OF FOREIGN LAWS ACTUALLY IN FORCE TO THE
GOVERNMENTS AND CITIZENS OF EVERY COUNTRY

The Institute utters the following *vœux*:

1. That the governments agree to communicate to each other laws which are now in force and those which may be promulgated in the future in the respective States, in accordance with the following provisions.

2. That among the laws thus to be communicated shall be comprised:

(a) Codes, laws and regulations which concern civil and commercial law, criminal law, civil and criminal procedure, including those concerning bankruptcy or meeting of creditors, and the organization of the judiciary.

(b) Laws and regulations relating to domestic administrative and public law, when they may be of general interest to States and to citizens of the various nations;

(c) Treaties, conventions and international agreements, or provisions contained therein, concerning relations of civil law or economic interest, except relations of a purely political character.

(d) Laws and regulations proclaimed in accordance with the said international agreements, in whatever form they may appear, or treaties of union with several States, or special international conventions with one of them.

The committee to be established in accordance with Section 3 shall have the power to add other items to these.

3. That a permanent international committee, composed

¹ *Annuaire*, vol. 8, p. 235.

² *Ibid.*, p. 265.

³ *Ibid.*, p. 271.

of delegates named by the governments, shall be established for the purpose of receiving the laws, etc., which may be communicated, preserving them and classifying them in systematic order.

4. That each year there shall be drawn up in French, under the direction of the permanent committee, a general table of all the laws, etc., communicated by the various States, following the classification indicated above.¹

BLOCKADE IN THE ABSENCE OF A STATE OF WAR²

On September 11, 1885, at Brussels, the Institute, on the motion of Mr. Perels, decided upon the creation of a committee entrusted with the investigation of the question of *the right of blockade in time of peace*.³

At the Heidelberg meeting, a report and a draft of resolutions were submitted by Mr. Perels,⁴ and also a counter-report by Mr. Geffcken,⁵ who concluded by condemning the very principle of a pacific blockade. The question was discussed on September 7, 1887, in the presence of His Royal Highness, the Grand Duke of Baden, and the following resolution was adopted: ⁶

DECLARATION VOTED BY THE INSTITUTE ON BLOCKADE IN THE ABSENCE OF A STATE OF WAR

The establishing of a blockade in the absence of a state of war should not be considered as permissible under the law of nations except under the following conditions:

1. Ships under a foreign flag shall enter freely in spite of the blockade.

2. Pacific blockade must be officially declared and notified, and maintained by a sufficient force.

3. The ships of the blockaded Power which do not respect such a blockade may be sequestered. When the blockade is over, they shall be restored to their owners to-

¹ For subsequent action of the Institute on this subject, see *post*, p. 70.

² *Tableau général*, p. 132.

³ *Annuaire*, vol. 8, p. 347.

⁴ *Ibid.*, vol. 9, p. 276.

⁵ *Ibid.*, p. 286.

⁶ *Ibid.*, p. 300.

gether with their cargoes, but without any compensation whatsoever.

COMMUNICATION OF FOREIGN LAWS¹

At the session in Heidelberg (1887) the Institute reversed its decision. After formally condemning the idea, expressed in Section 3 of these *Propositions*,² of an international committee charged with collecting, preserving and classifying systematically foreign laws,³ it adopted, at the session of September 8, 1887, the following text, to replace that which had been adopted at Brussels:⁴

The Institute utters the following *vœux*:

1. That the governments agree to communicate to each other laws which are in force and those which may be promulgated in the future in the respective States, in accordance with the following provisions.

2. That the laws thus to be communicated shall comprise principally:

(a) Codes, laws and regulations which concern civil and commercial law, criminal law, civil and criminal procedure, including those concerning bankruptcy or meeting of creditors, and the organization of the judiciary;

(b) Laws and regulations relating to domestic administrative and public law, when they may be of general interest to States and to citizens of the various nations;

(c) Treaties, conventions and international agreements, or provisions contained therein, concerning relations of civil law or economic interest;

(d) Laws and regulations proclaimed in compliance with the said international agreements, in whatever form they may appear, or treaties of union with several States, or special international conventions with one of them.

3. That in each State these various documents shall be collected in a central depository, accessible to the public.

¹ *Tableau général*, p. 21.

² Printed *ante*, p. 68.

³ *Annuaire*, vol. 9, p. 305.

⁴ *Ibid.*, p. 311.

INTERNATIONAL REGULATIONS CONCERNING PRIZES ¹

At Brussels, in 1885, the reporter being prevented from attending the session, the Institute adjourned the discussion of the draft to the following session.²

This discussion was continued at Heidelberg, 1887, and brought to a happy conclusion on September 8 of the said year, by the adoption of Articles 85 to 122 (the last) of the draft.³

It was also decided that the regulations adopted should be communicated to all governments with a letter expressing the *vœu* that "in the future, the reform may be yet more complete and that the international tribunal may become some day the only competent tribunal in prize matters."⁴

11.—*Organization and Procedure of the Court of Prize* ⁵

ARTICLE 85. The organization of the prize courts of first instance remains a matter of regulation by the legislation of each State.

ARTICLE 86. If an amicable adjustment has not been reached, the prize cases go directly from the prize court of inquiry of the captor State to the national court of prize of first instance, which, after having examined the case, summons the interested parties, *viz.*: the captor State and the captured persons, who are both represented before the tribunal by attorneys in fact, who also sign the briefs presented in the case. The tribunal examines the powers of attorney, which should be properly executed.

ARTICLE 87. In case the court should not publish an invitation to the parties to appear at the end of two weeks after the receipt of the case, the latter have the right to file a complaint with the international superior court because of delay in proceeding.

ARTICLE 88. The court states:

1. Whether the seizure was legal in form and in substance;

¹ *Tableau général*, p. 195.

² *Annuaire*, vol. 8, p. 167.

³ *Ibid.*, vol. 9, pp. 202-217.

⁴ *Ibid.*, p. 217.

⁵ *Ibid.*, p. 236. For articles 1 to 84 see *ante*, pp. 46-62.

2. Whether it should be sustained or declared illegal, that is, whether it is necessary to adjudge the captor State to be the owner of the property seized, or whether the vessel or merchandise should be restored to the captured persons;

3. Whether the ground on which the seizure was made is an infraction of, or in accord with, international law.

ARTICLE 89. The court in case of necessity causes the court of inquiry to complete the finding of facts and examines and decides the case even in the absence of requests and conclusions from the parties.

ARTICLE 90. The attorneys in fact, after having deposited a bond to cover the costs fixed by the court, are authorized to present to the court a brief of the motions or claims, within a period of four weeks, adding thereto the documents on which the case is based and enumerating the evidence upon which the parties depend.

ARTICLE 91. The court invites the attorneys to examine the briefs of the adverse parties and to reply thereto in writing within two weeks. The court and the attorneys having examined these replies, a day is fixed for public argument. At these arguments the president opens the session with an historical statement of the case. The parties make their replies and conclusions and the discussion of the several contentions raised takes place at the same time.

ARTICLE 92. If the court deems it necessary to produce testimony, or if one or both of the parties propose it and the court consents thereto, the latter orders the testimony to be taken within a period of two weeks. This period may be lengthened by the tribunal because of distances. After the expiration of the period fixed the court informs the parties in writing within a week of the result of this taking of testimony and fixes a new time for argument, where the procedure is similar to that above outlined. The parties may supply in their oral arguments and conclusions new evidence and facts.

ARTICLE 93. Where the representative of the captor State has presented no motion or the captured persons have made no claim, the court proceeds, after the expiration of

the period for motions or claims, to decide the case according to the status of the procedure at that time. The same is true where the parties, or one of them, do not appear at the hearing of the arguments, all the periods fixed being final. No request for complete restitution will be permitted.

ARTICLE 94. A period of two weeks is fixed for the rendering of judgment, this period running from the close of the arguments. In case the court should allow this period to elapse without rendering its decision, the parties have the right to complain of the delay to the court of appeal.

ARTICLE 95. The judgment states:

1. To whom the vessel and the cargo, or the amount received from public sale, or the sum paid by the owner if the vessel or cargo has been delivered to him, should be surrendered;

2. What damages shall be given, to whom, and by whom, in case: (a) of invalid or unlawful stopping or seizure by the officers of war vessels; (b) of delay in procedure or decision of the case; and (c) of liberation of the vessel and cargo;

3. If the bonds deposited are restored, in what sum restitution shall be made, and to whom it should be made;

4. Which of the two parties shall bear the expenses caused by the vessel, the cargo, and the court proceedings, if there is ground for reimbursing the captured persons with the expense of transportation or if they shall lose such expense because they have violated the regulations;

5. A decision concerning the fate of the crew of the vessel captured, in case the court of inquiry has not already set them at liberty.

ARTICLE 96. The judgment shall be made public and the attorneys of the parties shall be summoned for that purpose. In case one or the other should not appear on the day fixed, the court shall draw up a *procès-verbal* and the judgment shall be considered to have been made public. At the request of an attorney, the court delivers copies of the judgment published. At the time of publication notice is given of the provisions relating to appeal.

ARTICLE 97. A *procès-verbal* is drawn up covering all the arguments, conclusions, judgment and its publication, and such *procès-verbal* is read to the attorneys. The *procès-verbal*, corrected and completed if necessary, is signed by the president and registrar.

ARTICLE 98. The execution of the judgment is undertaken by the court of inquiry under authority of the judgment.

ARTICLE 99. The judgment may be executed when the attorney of none of the parties has appealed from the decision of the court of prize within the desired period. The judgment which has been appealed from cannot be executed without giving bond.

12.—*Organization and Procedure of the International Court of Prize*

ARTICLE 100. At the beginning of every war each of the belligerent parties constitutes an international court of appeal in prize cases. Each of these tribunals is composed of five members designated as follows:

The belligerent State shall itself name the president and one of the members. It shall designate also three neutral States, each of which shall choose one of the three other members.

ARTICLE 101. All prize cases may, upon request of the parties made within a period of twenty days, be referred to the international court of appeal. The presentation and justification of the appeal take place at the same time and the periods run from the day the decision is pronounced by the court, not including that day.

ARTICLE 102. The appeal is addressed to the national court of prize, which notifies the adverse party, who demands from the appellant a bond for the payment of costs.

ARTICLE 103. The matter presented in justification of the appeal states, and gives the reasons for, the different objections to the points determined in the judgment of the national court of prize.

ARTICLE 104. The national court of prize, in communicating the note of appeal to the adverse party, invites it to present a reply within two weeks. At the end of this period the said court sends the documents and note of appeal with the reply to the international court of appeal. The national court may grant an extension of time for good cause.

ARTICLE 105. The procedure before the international court of appeal is, in general, that of the court of prize.

ARTICLE 106. The judgment or decision on appeal shall contain a statement of the grounds therefor, and shall be rendered on the basis of a written report of the president, and after consideration of the new proofs and facts which may have been produced during the hearing on appeal.

ARTICLE 107. Neither appeal for reversal of judgment nor request for complete relief nor requests and observations of consuls and agents of the States, will be received with regard to the procedure and decision.

ARTICLE 108. The judgment on appeal shall be pronounced in the presence of the attorneys of the parties designated for that purpose, and at their request a copy of the decision shall be given to them. The decision shall also be published in one or more newspapers.

ARTICLE 109. After the publication the national court of prize shall be called upon for the execution of the judgment.

13.—*Substantive Law Concerning the Decision of Prize Cases and Cases of Recapture*

A.—PRIZE CASES

ARTICLE 110. No merchant vessel, or any cargo belonging to an individual, enemy or neutral, no shipwrecked vessel, or vessel which has run aground or been abandoned, or any fishing vessel, may be seized as prize and condemned except by virtue of a decision of courts of prize and because of acts forbidden by the present regulations.

ARTICLE 111. Prize courts are obliged to decide in accordance with the rules of international law.

ARTICLE 112. The prize courts cannot condemn enemy or neutral prizes except on the following grounds:

1. Prohibited transportation in time of war;
2. Violation of blockade;
3. Resistance to stopping, visit and search, or seizure;
4. Participation in the hostilities of the belligerents by private vessels.

ARTICLE 113. In order that a vessel may be condemned because of being engaged in transportation prohibited in time of war, it is necessary:

1. That the transportation be to an enemy destination;
2. That the object transported be itself prohibited, that is, contraband, or conditional contraband, of war;
3. That the contraband be seized in the very act of being transported, or that it be found on board a vessel when the latter is stopped.

ARTICLE 114. In order that a vessel may be condemned on the ground that it has violated a blockade, it is necessary:

1. That the blockade be published and effective;
2. That it has been brought to the attention of the accused vessel, and that this vessel has attempted to violate the blockade according to the provisions of the present regulations (Articles 43 and 44).

There is no ground for condemnation if a vessel has passed through the line of blockade, or into a blockaded sea, by accident, such as a tempest, or in error; but these facts must be proved by the vessel setting them up.

ARTICLE 115. Resistance of a merchant vessel to stopping, visit, search or seizure, should be proved in fact and manifested by acts; a simple protest of the resisting vessel cannot be sufficient to condemn it.

ARTICLE 116. In case where a private vessel participates in the hostilities of belligerents, it is necessary that the participation be proved and recognized as such.

ARTICLE 117. Official correspondence and contraband transported to an enemy destination shall be confiscated;

troops in course of transportation to the enemy shall be made prisoners. The vessel transporting them shall not be condemned unless:

1. It offers resistance;
2. It transports enemy troops;
3. If the cargo in course of transportation to an enemy destination is composed principally of provisions for the war vessels or troops of the enemy.

ARTICLE 118. The vessel shall be condemned with its cargo:

1. In case of violation of blockade (Article 114);
2. In case of resistance (Articles 112 and 115);
3. In case of participation in the hostilities of belligerents (Article 116).

B.—CASES OF RECAPTURE

ARTICLE 119. Any private vessel taken in time of war by a war vessel of a belligerent may be subject to recapture by a war vessel of the other belligerent, whatever may be the length of time during which it has remained in the power of the enemy before being retaken.

ARTICLE 120. Any recapture should be recognized as such and passed upon by the national court of prize.

ARTICLE 121. The person recapturing the vessel is bound to restore it to the original lawful owner, unless the latter has used it for a purpose forbidden by the international regulations.

ARTICLE 122. No bounty shall be given for recaptures except in case the vessel and cargo are adjudged to belong to the original owner, who shall not himself pay more than the expenses caused by the recapture and audited by the national court of prize.

NAVIGATION OF INTERNATIONAL RIVERS¹

This subject was placed upon the program of the Institute between the sessions of Munich and Brussels² at the suggestion of Mr. Martens and on his authority.

At the session of Brussels (meeting of September 11, 1885) the author of the proposition, who had become the reporter of the committee of investigation, presented a report setting forth his ideas.³ Mr. Martens then worked out a complete draft of regulations, which was transmitted to the members of the Institute in the Bureau's circular of May, 1887,⁴ and gave rise to important communications from Messrs. Engelhardt and Kamarovsky.⁵ This draft, which was discussed at the session of September 9, 1887, at Heidelberg, was adopted at that meeting with some slight modifications, in the following form:⁶

DRAFT OF INTERNATIONAL REGULATIONS FOR THE NAVIGATION OF RIVERS

GENERAL PROVISIONS

ARTICLE 1. The States bordering a navigable river are required to regulate by common agreement and in the general interest all matters relating to the navigation of that river.

ARTICLE 2. The navigable tributaries of international rivers are subject in all respects to the same regulation as the rivers to which they are tributary, in accordance with the agreement between the States bordering the river, and with the present regulations.

ARTICLE 3. Navigation of the entire length of international rivers, from the point at which they become navigable to the sea, is absolutely free and cannot be denied to any flag so far as commerce is concerned.

The boundary of the States separated by the river is marked by the *thalweg*, that is, the median line of the channel.

ARTICLE 4. The subjects and flags of all nations are

¹ *Tableau général*, p. 148.

⁵ *Annuaire*, vol. 9, pp. 156 *et seq.*

² 1883, 1885.

⁶ *Ibid.*, p. 182.

³ *Annuaire*, vol. 8, pp. 272-289.

⁴ See *Revue de droit international*, vol. xix, pp. 171-174.

treated upon an absolute equality in all matters. No distinction shall be made between the subjects of the riparian States and those of non-riparian States.

ARTICLE 5. The tolls for navigation collected along international rivers shall be exclusively for the expenses of improving these rivers and for the maintenance of navigation in general.

ARTICLE 6. In time of war navigation upon international rivers is free for the flags of neutral nations, except as to the observation of restrictions imposed by the force of circumstances.

ARTICLE 7. All works and structures erected in the interest of navigation, especially offices for the collection of tolls and their funds, as well as the personnel permanently attached to these establishments, are placed under the guaranty of permanent neutrality and consequently shall be protected and respected by the belligerent States.

SPECIAL PROVISIONS

ARTICLE 8. All sailing and steam vessels, without any distinction because of nationality, are authorized to transport passengers and merchandise, or to tow vessels between all ports situated along the international rivers.

Foreign vessels, whether sea-going or for river navigation, shall not be admitted to regular coastwise trade, that is, to exclusive and continuous traffic between the ports of the same State located on the river, except by special concession of that State.

ARTICLE 9. The vessels and merchandise in transit on the international rivers are not subject to any tax in transit, whatever may be their origin or destination.

ARTICLE 10. Navigation of international rivers is free from charges incident to merely calling at a port, port dues, warehouse dues, break-bulk charges or charges because a vessel is forced to lie over; no maritime or river toll may be collected.

ARTICLE 11. Taxes or tolls having the character of pay-

ment for the actual use of port structures, such as cranes, scales, quays and storehouses, may be collected.

ARTICLE 12. Customs duties, taxes on monopolies or consumption collected by the riparian States cannot in any manner hinder free navigation.

ARTICLE 13. Port taxes for the actual use of cranes, scales, etc., as well as pilot and lighthouse dues, maintenance and establishment of beacons and buoys, intended to cover the technical and administrative costs incurred in the interest of navigation, are fixed in the tariffs published officially in all the ports along the international rivers.

ARTICLE 14. The above-mentioned tariffs shall be drawn up by mixed commissions from the States bordering the rivers.

ARTICLE 15. The tariffs shall not provide for any differential treatment.

ARTICLE 16. The tariffs of taxes mentioned in Article 13 shall be based upon the cost of construction and maintenance of the local establishments and according to the tonnage of the vessels indicated by the ship's papers.

ARTICLE 17. The riparian States shall not have the power to collect customs duties on merchandise transported along the international rivers unless they are to be introduced into the territory of these States.

ARTICLE 18. Vessels can discharge their cargoes in whole or in part only at ports and other points on the river where there are customs houses, except in case of *force majeure*.

ARTICLE 19. Vessels *en voyage* and provided with papers in accordance with regulations cannot be arrested under any pretext by the customs authorities of the riparian States, if the two banks of the river belong to different States.

ARTICLE 20. Vessels which enter that part of an international river where both banks belong to a single State are obliged to pay the customs duties charged by the local tariff on merchandise imported into the territory of that State.

Merchandise in transit is subject only to sealing and special examination by the customs authorities.

ARTICLE 21. The riparian States shall agree among

themselves upon the police regulations intended to govern the use of the river in the special interest of public order and security.

ARTICLE 22. Special admiralty courts or those of common law existing in the riparian States shall have jurisdiction, on appeal, of penalties for infraction of the police regulations established on the principle of absolute equality of treatment for all vessels, without distinction on the ground of nationality.

ARTICLE 23. Quarantine offices shall be established by the riparian States at the mouths of international rivers; supervision of vessels is exercised both when they enter and when they leave.

Supervision of the sanitation of the vessels in the course of the river navigation shall be exercised according to the special provisions established by the river commissions.

ARTICLE 24. The necessary work to ensure the navigability of international rivers shall be undertaken either directly by the States, or by the river commissions.

ARTICLE 25. Each riparian State is free to take such measures as it deems necessary to maintain and improve, at its own expense, the navigability of those parts of the international rivers subject to its sovereignty.

ARTICLE 26. In all cases, it is forbidden to undertake works which may change the disposition of the common waters or hinder navigation, and against which other riparian States have protested.

ARTICLE 27. The authorities charged with the navigation of international rivers are:

1. The authorities of the States bordering the rivers;
2. The river commission, composed of delegates of the sovereign States.

ARTICLE 28. Each riparian State preserves its sovereign rights over such parts of the international rivers as are subject to its sovereignty, within the limits established by the provisions of these regulations and of treaties or conventions.

ARTICLE 29. The river commission arrives at its deci-

sions by majority vote. In case of equal division, the president casts the deciding vote.

However, a vote does not bind the States comprising the minority, if the delegates of these States have formally opposed the execution of the measure in advance.

ARTICLE 30. The river commission is a permanent authority over international rivers; it has the following powers:

1. It designs and causes to be executed the work necessary for the improvement and development of the navigability of the rivers;

2. It determines and puts into operation the tariffs of navigation charges and other charges mentioned in Articles 13-18;

3. It draws up the regulations of the river police;

4. It supervises the maintenance in good condition of the works and the strict observation of the provisions of these international regulations;

5. It names the inspector in chief of navigation upon the international river.

ARTICLE 31. The inspector in chief acts as an organ of the river commission and under the direction thereof. His authority is exercised without distinction as to flag.

ARTICLE 32. The inspector in chief attends to the execution of these international regulations as well as of the special river regulations, and to the policing of navigation.

ARTICLE 33. This officer has the right, in the exercise of his functions, to require directly the assistance of the military authorities or the assistance of the local authorities along the river.

ARTICLE 34. The local inspectors and employees of toll-collecting offices and quarantine are named by each State along the river; but they exercise their powers under the orders of the inspector in chief, and have, like him, an international character.

ARTICLE 35. Two or more riparian States may agree in the nomination of the same delegate to the river commis-

sion and the nomination of the same local inspector, or employees of toll-collecting offices, employees of quarantine, court judges, etc.

ARTICLE 36. The inspector in chief in the first instance assesses the fines incurred because of violation of the police and navigation regulations.

ARTICLE 37. Appeal from his decisions may be brought either before an admiralty court established for that purpose, or a local court especially designated by each riparian State, or before the river commission.

ARTICLE 38. Each riparian State names engineers who are commissioned to take care of the maintenance and improvement of that section of the river subject to its sovereignty.

ARTICLE 39. The Powers shall fix by common agreement the method of measuring and gauging to determine the capacity of river and sea-going ships, to be of binding force upon all nations.

ARTICLE 40. In case of war between the riparian States, the property afloat upon an international river shall, without distinction between neutral and enemy property, be treated in accordance with the rules governing the protection of enemy property on land in case of war.

MARINE COLLISIONS¹

The question of conflict of laws and uniformity of legislation on the subject of marine collisions was put upon the program of the Institute by authority of a decision reached at Heidelberg in the session of September 7, 1887. The authors of the proposition, Messrs. Lyon-Caen and Sacerdoti, were at the same time named reporters, the former for the conflict of laws and the latter for uniform legislation.

The first report by Mr. Lyon-Caen, explaining and justifying this proposition, was read at Heidelberg.² A second report by Mr. Lyon-Caen, followed by a draft of international regulations covering conflicts of law on the subject of marine collisions, and on the other hand a report and a draft of a uniform law covering marine collisions presented by Mr. Sacerdoti, were communicated to the Institute in anticipation of the session

¹ *Tableau général*, p. 90.

² *Annuaire*, vol. 9, pp. 136 et seq.

of Lausanne.¹ A learned discussion of the two drafts took place in the two plenary sessions of September 4, 1888, and the Institute adopted them in the following form:

DRAFT OF UNIFORM LAW FOR MARINE COLLISIONS²

ARTICLE 1. If the collision was caused by a mistake all the damages are borne by the vessel on which the mistake occurred.

ARTICLE 2. If mistake was made on both vessels, no indemnity can be claimed for the damage caused to one of the vessels, or to both, unless it be shown by the parties interested that the principal cause of the disaster should be charged more especially to one of the vessels; and in that case, the courts shall decide to what extent damages should be assessed against one in favor of the other.

In all cases where the cause is a mutual mistake, the two vessels are jointly responsible for the damage suffered by the cargo and persons. The vessel which has to pay the entire amount of the damage shall have the right to have recourse against the other for reimbursement of one-half of the sum advanced. When the tribunals, according to the proof offered, shall have fixed other bases for contribution to the amount of damages, the recourse shall be in accordance with the rules set up by these courts.

ARTICLE 3. When the vessel is under the direction of a harbor pilot as required by law and the members of the crew have fulfilled the obligations falling upon them, the vessel is not liable for the damage resulting from a collision caused by the mistake of the pilot.

ARTICLE 4. If the collision resulted in the death or injury of human beings, the damages allowed on account of such death or injury are deducted first, as a matter of preference, from the amount recovered.

ARTICLE 5. All suits for damages arising from collisions are barred unless suit is brought within a year after the collision and within a month after the interested parties learn of the event.

¹ *Annuaire*, vol. 10, pp. 105 *et seq.*

² *Ibid.*, pp. 150 *et seq.*

ARTICLE 6. Suit may be brought by the captain for the account of all interested parties.

ARTICLE 7. The vessel causing the collision may be seized in any port, even at a port where it may have put in for any urgent reason, during the entire time suit is pending and until the judgment rendered against it can be executed, unless it furnishes a sufficient bond, to be fixed by the court.

ARTICLE 8. The following shall have jurisdiction of the suit for damages: the judge of the domicile of the defendant, the judge of the port nearest the scene of the disaster, the judge of the port of destination of the vessel causing the collision, the judge of the port where the latter vessel may first call, the judge of the place where the vessel may be seized.

DRAFT OF INTERNATIONAL REGULATIONS CONCERNING CONFLICT OF LAWS ON THE SUBJECT OF MARINE COLLISIONS

ARTICLE 1. In case of a collision on the interior waters of a country between vessels whether of the same nationality or of different nationalities, the law of that country shall be applied in determining which shall pay the damages caused to the vessels, persons and cargoes, within what periods claims should be presented, what formalities should be observed by the interested parties for the preservation of their rights and which are the competent tribunals to take jurisdiction thereof.

The above is likewise applicable when the collision occurs in territorial waters.

ARTICLE 2. In the case of collision *on the high seas between vessels of the same nationality*, the law of the flag of the vessels shall be applied in the case of all questions arising out of the collision.

If the collision occurred *on the high seas between vessels of different nationalities*, the law of the flag of each vessel shall determine which shall pay the damages. However, the claimant cannot make a demand which would not be supported by the law of his flag.

Claims should be presented within the periods prescribed by the law of the flag of the claimant and after the fulfilment of the formalities required by it. Claims may be brought before a competent tribunal either in accordance with the law of the flag of the claimant, or of the flag of the defendant.

OCCUPATION OF TERRITORIES ¹

At the suggestion of Mr. von Martitz, made at the session in Brussels, September 12, 1885, the Institute placed upon its program the following topic: "Examination of the theory of the Conference of Berlin concerning the occupation of territories."² At Heidelberg, in 1887, the Institute contented itself with noting a report, followed by conclusions, submitted by Mr. von Martitz.³

In spite of the absence of Mr. von Martitz, the meeting at Lausanne, 1888, did not think it could longer delay the examination of the conclusions proposed by him. But the Bureau had also communicated at the session of Heidelberg a "Draft of international declaration having in view the determination of the rules to be followed in the occupation of territories," of which the author was Mr. Engelhardt. After having noted the written observations presented in the name of Mr. Westlake, and discussed and rejected Articles 1 and 2 of the conclusions of Mr. von Martitz, the meeting at Lausanne took as the basis of its final deliberations the draft of Mr. Engelhardt.

Conclusions, the text of which follows, were adopted in the plenary session of September 7, 1888.⁴

It should be noted here, incidentally, that certain articles in Mr. Engelhardt's draft, although not comprised in the text adopted, were formally reserved to be the subject of special study. A new committee (the sixth) was formed to deal with the question of the slave trade and the supervision of slave ships, to which these articles related. For the action taken by the Institute upon this special question, see the title "Maritime slave trade."⁵

DRAFT OF INTERNATIONAL DECLARATION REGARDING OCCUPATION OF TERRITORIES ⁶

ARTICLE 1. Occupation of territory by sovereign right cannot be recognized as effective unless it complies with the following conditions:

¹ *Tableau général*, p. 144.

² *Annuaire*, vol. 8, p. 346.

³ *Ibid.*, vol. 9, pp. 244 *et seq.*

⁴ *Ibid.*, vol. 10, pp. 176 *et seq.*

⁵ *Post*, p. 93.

⁶ *Annuaire*, vol. 10, p. 201.

(a) Taking possession in the government's name of a territory within certain limits;

(b) Official notification of taking possession.

Taking possession is accomplished by the establishment of a responsible local power, provided with sufficient means to maintain order and assure the regular exercise of its authority within the limits of the occupied territory. These means may be taken over from the institutions existing within the occupied territory.

Notification of taking possession is given, either by publication in the form which is customary in each State for the notification of official acts, or through the diplomatic channel. It should contain an approximate statement of the limits of the occupied territory.

ARTICLE 2. The rules set forth in the above article are applicable in the case where a Power, without assuming the entire sovereignty over a territory, and while maintaining, with or without restrictions, the local administrative autonomy, places the said territory under its protection (*protectorat*).

ARTICLE 3. If taking possession gives rise to claims based upon prior titles, and if the ordinary diplomatic procedure cannot bring about an agreement between the interested parties, the latter may resort either to good offices, mediation, or the arbitration of one or more third Powers.

ARTICLE 4. Wars of extermination against the native tribes, all useless hardships, all torture, even by way of reprisal, are forbidden.

ARTICLE 5. In the territories referred to by the present declaration the authorities shall respect, or cause to be respected, all rights, especially that of private property, both domestic and foreign, individual and collective.

ARTICLE 6. The said authorities are bound to care for the preservation of the native populations, their education and the improvement of their moral and material well-being.

They shall favor and protect, without distinction because of nationality, all the private institutions and enterprises created and organized for the above purposes, provided that

the political interests of the occupying or protecting State shall not be compromised or threatened by the action or tendencies of these institutions and enterprises.

ARTICLE 7. Freedom of conscience is guaranteed to the natives as it is to nationals and foreigners.

Freedom of worship shall not be restricted or hindered in any way.

However, practices contrary to the laws of morality and humanity shall be forbidden.

ARTICLE 8. The authorities shall provide for the abolition of slavery.

Purchase or employment of slaves for domestic service by others than natives shall be immediately forbidden.

ARTICLE 9. Slave trade shall be forbidden within all of the territories covered by the present declaration.

Markets for the sale of slaves shall not exist within these territories, nor may slaves be transported over these territories for purposes of sale; and the most rigorous measures shall be taken against those who conduct, or are interested in, this traffic.

The introduction of, and domestic traffic in, pillories and other instruments of punishment used by slave-owners shall be stopped.

ARTICLE 10. The sale of strong drinks shall be regulated and controlled so as to save the native populations from the evils resulting from the abuse thereof.

ADMISSION AND EXPULSION OF ALIENS ¹

In 1885, Mr. Brusa had called the attention of the committee on penal law to the advantage of investigating the question of the expulsion of aliens at the same time as that of extradition.² The Institute, sharing his view, appointed, at its Brussels meeting, a new committee for the investigation of this second question.³

Mr. von Martitz was appointed its reporter; but reasons of expediency obliged the Institute to defer the discussion of the subject for some time.⁴

¹ *Tableau général*, p. 133.

² *Ibid.*, p. 347.

³ *Annuaire*, vol. 8, p. 166.

⁴ *Ibid.*, vol. 9, pp. 33-34, 301.

At the Lausanne meeting (1888), the reporter, being prevented by other work, the secretary general, Mr. Rolin-Jaequemyns, under Article 18 of the constitution, presented a report in his stead, followed by conclusions which, with some remarks of Mr. von Martitz, were referred for immediate investigation to a committee presided over by Mr. Rivier. The committee drew up a *Preliminary Draft Declaration*, which, after consideration in plenary session on September 8, 1888, was adopted as follows,¹ with postponement to another meeting of the consideration of special rules for ordinary cases of expulsion.

DRAFT INTERNATIONAL DECLARATION ON THE RIGHT OF EXPELLING ALIENS²

The Institute of International Law,

Considering that the expulsion as well as the admission of aliens is a question of policy which no State may renounce, but which, according to circumstances, is sometimes forgotten and at other times suddenly demands attention;

Considering that it may be well to formulate in a general way some stable principles which, while leaving to the governments the means of accomplishing their difficult task, shall at the same time guarantee, as far as possible, the security of States, the right and the liberty of individuals;

Considering that the *vœu* to see these principles recognized and sanctioned can involve no estimate of past acts of expulsion;

Is of the opinion that the expulsion and admission of aliens should be subject to certain rules, and suggests, while waiting for a complete draft which could be discussed at a later date, the following provisions:

ARTICLE 1. In principle, every sovereign State may regulate the admission and expulsion of aliens in such manner as it thinks best; but it is in keeping with public faith that aliens be previously advised of the general rules which the State intends to follow in the exercise of this right.

ARTICLE 2. Except in cases of extreme necessity, such as war or serious disturbances, a distinction should be made between ordinary expulsion, applying to specific individuals,

¹ *Annuaire*, vol. 10, p. 227.

² *Ibid.*, p. 244.

and extraordinary expulsion, applying to classes of individuals.

ARTICLE 3. Expulsion under pressure of necessity shall be only temporary. It shall not exceed the duration of the war or a period determined upon in advance, at the expiration of which it may be at once converted into ordinary or extraordinary expulsion.

ARTICLE 4. Extraordinary expulsion shall be accomplished by a special law or at least by an ordinance previously promulgated. The general ordinance, before being carried out, should be made public a reasonable time beforehand.

ARTICLE 5. In ordinary expulsion, those individuals who are residents or who have a commercial establishment must, from the standpoint of guaranties, be distinguished from those who have neither.

ARTICLE 6. A decision decreeing ordinary expulsion and stating the provisions on which it is based must be made known to the party interested before being put into execution.¹

COMPETENCE OF COURTS IN SUITS AGAINST FOREIGN STATES OR SOVEREIGNS ²

The question was put on the order of the day at the close of the session at Lausanne on the motion of Mr. von Bar, who was appointed reporter of the committee with Mr. Westlake.³ The question resulted in works by the two reporters and by Messrs. Gabba and Hartmann.⁴

The Institute deliberated September 8 and 11, 1891, in plenary session on the Draft International Regulations presented by Mr. von Bar, and adopted it in the latter meeting.⁵ This text was revised by the drafting committee after its reconstitution in September, 1892.

¹ For subsequent action of the Institute on expulsion of aliens, see *post*, p. 103.

² *Tableau général*, p. 116.

³ *Annuaire*, vol. 10, p. 295.

⁴ *Journal du droit international privé*, vol. 16, pp. 180 and 538, vol. 17, p. 28; *Revue de droit international*, vol. xxii, p. 425; *Annuaire*, vol. 11, pp. 410 *et seq.*

⁵ *Ibid.*, p. 436.

DRAFT INTERNATIONAL REGULATIONS ON THE COMPETENCE
OF COURTS IN SUITS AGAINST FOREIGN STATES, SOVEREIGNS,
OR HEADS OF STATES ¹

ARTICLE 1. Movable property, including horses, carriages, wagons, and vessels, belonging to a foreign sovereign or head of State, and intended directly or indirectly for the actual use of that sovereign or head of State or of persons accompanying him in his service, is exempt from seizure.

ARTICLE 2. Likewise exempt from any seizure are movable property and immovable property belonging to a foreign State and intended, with the express or tacit approval of the State in whose territory it is, for the service of the foreign State.

ARTICLE 3. Nevertheless a creditor for whose benefit something belonging to a foreign State, sovereign, or head of State is *expressly* pledged or hypothecated by that State, sovereign, or head of State, can, when the occasion arises, retain it or have it seized.

ARTICLE 4. The only actions cognizable against a foreign State are:

1. Real actions, including possessory actions relating to real or personal property within the territory;

2. Actions based upon the capacity of the foreign State as an heir or legatee of a *ressortissant* of the territory or as entitled to an inheritance taking effect in the territory;

3. Actions relating to a commercial or industrial establishment or a railroad, when exploited by the foreign State on the territory;

4. Actions for which the foreign State has expressly admitted the competence of the tribunal. The foreign State which itself lays a complaint before a court is deemed to have admitted the competence of this court as regards judgment for costs of the suit and as regards a counter-claim arising out of the same affair; likewise, a foreign State which, when making answer to an action brought against

¹ *Tableau général*, p. 117.

it, does not take exception to the jurisdiction of the court, is deemed to have admitted it to be competent to hear the case;

5. Actions arising out of contracts entered into by a foreign State on the territory, if the complete execution on the same territory may be required of it according to an express clause or according to the very nature of the action;

6. Actions in damages founded on a tort or quasi-tort committed on the territory.

ARTICLE 5. Actions brought for acts of sovereignty are not cognizable, nor acts arising out of a contract of the plaintiff as an official of the State, nor actions concerning the debts of the foreign State contracted through public subscription.

ARTICLE 6. Actions brought against foreign sovereigns or heads of States are subject to the rules laid down in Articles 4 and 5.

ARTICLE 7. Nevertheless, actions resulting from obligations contracted before the accession of the sovereign or the appointment of the head of State are governed by the ordinary rules of competence.

ARTICLE 8. The summons, both for sovereigns or heads of States and for States themselves, are made through the diplomatic channel.

ARTICLE 9. It is desirable that in each State the laws of procedure accord sufficient time so that in cases of action brought or seizure demanded or effected against a sovereign or head of State or a foreign State, a report may be made to the government of the country in which the action has been brought or the seizure demanded or effected.

COMMUNICATION OF INTERNATIONAL TREATIES ¹

At the session of Heidelberg (1887) Mr. von Martitz presented a "*Draft of Conclusions*" with regard to rules to be followed in the publication of treaties; but the meeting did not have time to begin the examination of this item of its program.² This was likewise the case at the session of Lausanne (1888).³

At Hamburg (1891) when the question was brought up for discussion, the unanimous opinion that the best method of reaching the desired result was to form an international union of which all the interested States should be members, showed itself from the first. Two recent events encouraged this view: (1) the formation at Brussels, in fulfilment of the international convention of July 5, 1890, of an institution created at common expense by fifty-one States, for the purpose of publishing the customs tariffs of all countries in the world: (2) a letter addressed to the Institute, August 27, 1891, by the Department of Justice and Police of the Swiss Federation, informing the Institute that should the latter express the wish, the Swiss Federal Council, recognizing the service which such an international union could render by the publication of treaties, would be disposed to take the initiative in diplomatic negotiations for its creation.⁴ Consequently, the Institute, at the session of September 12, 1891, adopted the following draft of resolution:⁵

The Institute utters the *vœu* that an International Union may be formed, by means of a treaty to which all civilized States should be invited to adhere, for the purpose of securing in as universal, prompt and uniform a manner as possible, the publication of the treaties and conventions between the States which are members of the Union.⁶

MARITIME SLAVE TRADE ⁷

In 1885, at the session of Brussels, the Institute placed upon its program, at the suggestion of Mr. von Martitz, a question intended to produce an examination of the theory of the Conference of Berlin on the subject of the occupation of territories. The action taken upon this general question has been noted,⁸ under the title "Occupation of

¹ *Tableau général*, p. 23.

² *Annuaire*, vol. 9, p. 302.

³ *Ibid.*, vol. 10, p. 246. Remarks of Count Kamarovsky.

⁴ *Ibid.*, vol. 11, p. 321.

⁵ See *post*, p. 97.

⁶ *Ante*, p. 86.

⁷ *Ibid.*, p. 328.

⁸ *Tableau général*, p. 93.

territories." But Mr. Ed. Engelhardt, while studying the general question concurrently with the reporter, had inserted in his draft of conclusions provisions regarding the suppression of the slave trade and the regulation of slave ships. The Institute, at its session in Lausanne, 1888, decided that these provisions deserved a separate examination and formed a new committee to study them, with Mr. Engelhardt as reporter.¹

In the meantime the International Conference which met at Brussels in 1889 and 1890 adopted a General Act consisting of 100 articles, forming a complete code for the suppression of the slave trade both on land and on sea. Immediately after the signature of this Act (July 2, 1890), Mr. Engelhardt addressed a report to the Institute concerning the articles regarding maritime slave trade, in which he stated that the supervision provided for therein was not uniform in character, and that there might be ground for arranging it in a more complete manner, especially by organizing mixed courts of prize;² in contemplation of the session at Hamburg, he therefore drew up a draft of "Resolutions concerning the supervision of maritime slave trade."³ Family reasons having prevented the reporter from being present at Hamburg, the discussion of these resolutions was postponed to another session. But, as one of the great Powers represented at the Conference of Brussels had refused to ratify the Act signed by its plenipotentiaries in 1890, and therefore to a certain extent rendered useless the results of the International Conference, the Institute, while deciding to continue the committee in charge of the project of Mr. Engelhardt, adopted at the suggestion of Mr. Rolin-Jacquemyns, in the plenary session of September 12, 1891,⁴ the following "*Vœu* with the reasons therefor":

VŒU OF THE INSTITUTE, WITH THE REASONS THEREFOR,
LOOKING TO THE COMPLETE RATIFICATION OF THE GEN-
ERAL ACT OF BRUSSELS⁵

The Institute of International Law, considering the preparatory work of the sixth committee, formed at Lausanne in 1888 and having as its purpose a study of *Maritime slave trade and supervision of slave ships*;

Considering the memoir and conclusions of Mr. Engelhardt, reporter of that committee;

Considering the General Act of the Conference of Brussels, July 2, 1890, and especially Articles 20 to 61, having for their purpose the suppression of the maritime slave trade;

Considering that this Act, which was agreed to after

¹ *Annuaire*, vol. 10, p. 174.

² *Ibid.*, vol. 11, pp. 241-262.

³ *Ibid.*, p. 262.

⁴ *Ibid.*, p. 268.

⁵ *Ibid.*, p. 269.

long and mature deliberations by the representatives of seventeen Powers, among which were all the maritime Powers of Europe and the United States of America, marks considerable progress in public international law, since it gives the sanction of common consent of the high contracting Powers to a collection of rules intended for the suppression, both upon land and upon sea, of this most infamous traffic, and for the civilization of an entire continent;

Considering that the part of this Act which concerns the suppression of the slave trade upon the sea justly takes into consideration the humanitarian purpose to be attained and the precautions which must be taken in order that the right of supervision over the slave ships conferred upon the cruisers of the signatory Powers, may not be exercised in a manner unnecessarily vexatious or offensive to the sovereignty or the dignity of any of the contracting parties;

Considering that to this end the Conference first clearly distinguished between the Powers already bound together by special conventions for the suppression of the slave trade and those which are free from all engagements upon this subject;

Considering that as a result the provisions of these special conditions regarding the reciprocal right to visit vessels at sea, are strictly limited to the Powers which have formally adhered thereto;

Considering that, far from extending these special provisions to the Powers not parties thereto, the General Act of Brussels limits in a general manner any international exercise of maritime supervision of the slave trade to a zone extending along the eastern coast of Africa and to vessels of less than 500 tons; that the purpose of these restrictions is to render practically impossible any interference with the commercial relations between the ports of Europe or America and the rest of the world as a result of the prosecution of the slave trade;

Considering that, in so far as the Powers which are free from all conventional bonds are concerned, the provisions of the General Act of Brussels put a most happy and conciliatory end to the difference in views which has existed

between France and England up to this time with regard to the right to visit suspicious vessels; that, considering the traditions of the former of these Powers, the Act of Brussels has in no wise restored the right of visit in a way to prejudice it. In short, this Act implies simply an agreement of all the Powers:

1. Upon certain uniform rules which each one of them will apply as a sovereign within its own jurisdiction, concerning the granting of a flag to native vessels, the list of the crew, and the manifest of negro passengers;

2. Upon a restricted right of international control, restricted as to the zone and tonnage, within the limits above mentioned and consisting in fact of a verification of the flag;

Considering that this supervision, being limited to an actual verification by naval officers of certain papers, clearly specified, is intended to prevent native vessels, the only ones which now carry on the slave trade, from fraudulently flying the flag of one of the signatory Powers;

Considering that as to ships which are seized, arrest, inquiry and judgment cannot take place unless, as a result of the performance of this supervision, "the cruiser is convinced that an act of trading in slaves has been committed on board during the journey, or that irrefutable proof exists for charging the captain or the owner with misuse of flag, or fraud, or participation in the slave trade" (Article 69 of the Act);

Considering that, under these conditions, it is highly desirable that the Act of the Conference of Brussels should be put into execution, so as to permit not only the more effective suppression of the slave trade upon the sea, but so as not to delay longer the organization of an entire group of institutions and measures intended to prevent, directly or indirectly, slave trade on land; that, furthermore, by Article 97 of the Act the Powers reserve the right "to introduce in the future by common agreement modifications or improvements the value of which may be demonstrated by experience";

For these reasons, and while reserving the right to examine in the future, at the proper time, these modifications

or improvements, the Institute expresses the *vœu* that the General Act of Brussels may be ratified as soon as possible by all the Powers the plenipotentiaries of which signed it.

COMMUNICATION OF INTERNATIONAL TREATIES ¹

Mr. von Martitz and Mr. Rolin-Jaequemyns, the latter since replaced at his own request by Mr. Martens, were instructed to make use of the preparatory work already performed, and to consult other members of the ninth committee in drafting as soon as possible a "Draft convention" and "Regulations for its execution" for the above purpose.

This twofold draft, especially worked out by Mr. Martens, was presented to the Institute at the session of Geneva and adopted, September 7, 1892, in the form given below.

Immediately after the session, and in reply to the letter of August 27, 1891, the two texts adopted by the Institute were communicated through the Bureau to the Federal Council of the Swiss Confederation, in order to serve as a starting point for diplomatic negotiations for the purpose of creating the International Union in question.

DRAFT OF CONVENTION CONCERNING THE CREATION OF AN INTERNATIONAL UNION FOR THE PUBLICATION OF THE TREATIES CONCLUDED BY THE POWERS WHICH MAY ACCEDE THERETO ²

His Majesty, the German Emperor, etc., etc., etc. . . . animated by the desire to facilitate, as far as possible, the exact and prompt communication of all treaties, conventions and international arrangements of whatever character concluded between them, or by the contracting governments with other non-contracting States, have decided to conclude the present convention in order to ensure the publication of the international acts above mentioned, and have named, etc., etc., etc.

Who, after communication of their full powers, found in good and due form, have agreed upon the following articles:

ARTICLE 1. An association bearing the name of "In-

¹ *Tableau général*, p. 23. See *ante*, pp. 64, 93.

² *Annuaire*, vol. 12, p. 252.

ternational Union for the Publication of Treaties among States" is hereby formed by the agreement of the governments of . . . and of all governments which shall, in the future, accede to the present convention.

ARTICLE 2. This Union has for its purpose the publication, at common expense, and the prompt and correct communication of international agreements of whatever character, form, or scope, concluded by the different contracting States.

ARTICLE 3. To this end there shall be created at Berne an International Bureau charged with the publication of the treaties and conventions between States.

A special set of rules, determining the operation of this Bureau, is annexed to the present convention and shall have the same binding force as it.

ARTICLE 4. The International Bureau shall publish a collection entitled *Recueil international des traités* (International collection of treaties). This publication shall be recognized as the official organ of the International Union for the Publication of Treaties among States, and shall be proof thereof before all of the tribunals of the contracting Powers.

ARTICLE 5. The contracting Parties agree to communicate to the International Bureau as soon as possible, for publication in the *Recueil international des traités et conventions*, the following documents:

1. All treaties, conventions, declarations or other international acts of binding force upon the States signatory to the present convention, and which may be published in the different countries; international acts concluded by the contracting Powers with States which have not adhered to the present International Union are not excluded from this communication;

2. All domestic laws, ordinances, or regulations published by the contracting governments in their respective countries in compliance with treaties or conventions signed in their names and ratified;

3. *Procès-verbaux* of international congresses or con-

ferences which shall be transmitted to the International Bureau by the Power upon the territory of which these congresses or conferences shall take place;

4. Circulars or instructions which the said governments shall address to their diplomatic or consular agents for the purpose of ensuring the uniform execution of international agreements entered into by them, provided that each government shall determine for itself the propriety of communicating to the International Bureau any particular circular or instruction.

ARTICLE 6. All the documents mentioned in the preceding article shall be communicated to the International Bureau in their original text and accompanied by a French translation where necessary.

ARTICLE 7. All the documents officially communicated by virtue of Article 5, to the International Bureau, shall be published in the *Recueil international des traités* according to the authentic text in the original language, without the slightest change in the act thus communicated.

International acts not concluded in French shall be published with a French translation expressly recognized by the contracting Parties as in conformity with the authentic text of the treaty or convention and as of binding effect upon them.

Every exception from this general rule should be stated formally and mentioned at the head of the act when published.

ARTICLE 8. All international acts shall be published by the International Bureau without comment.

ARTICLE 9. The contracting or adhering States agree to communicate to the International Bureau all international acts (Article 5, Section 1) within two months after they go into effect; all other acts enumerated in Article 5 (Sections 2, 3 and 4) within one month after their publication or effective date.

ARTICLE 10. The present convention shall remain in force for five years from the exchange of ratifications.

ARTICLE 11. Upon the request of a contracting or adher-

ing government a new international conference may be called after the expiration of five years, in order to introduce such improvements or modifications as may be deemed useful or necessary.

ARTICLE 12. If no such request as is provided for in the preceding article is made twelve months before the expiration of the first five years, the present convention shall remain in force for the ensuing five years, and thus continue for five-year periods.

In faith whereof, etc. . . .

DRAFT REGULATIONS FOR THE EXECUTION OF THE CONVENTION ESTABLISHING AN INTERNATIONAL BUREAU FOR THE PUBLICATION OF TREATIES AMONG STATES

I.—*Organization of the International Bureau*

ARTICLE 1. The International Bureau shall be organized under the supervision of the government of the Swiss Confederation under the conditions provided in the following articles.

ARTICLE 2. The personnel of the International Bureau shall be named by the Swiss Federal Government, which shall communicate to the contracting or adhering States the measures taken for the regular operation of the institution.

ARTICLE 3. The Swiss Federal Government shall supervise the regular operation of the International Bureau. It shall advance the necessary funds for the first installation of the International Bureau, shall supervise the expenditures, and provide for an annual accounting.

ARTICLE 4. An annual report of the work and financial management of the International Bureau shall be presented each year to the interested governments.

ARTICLE 5. The International Bureau has the right to correspond directly with all the interested governments and to request all information necessary to insure the prompt and accurate publication of the documents communicated to it in pursuance of Article 5 of the convention.

The International Bureau shall, within the limits of its ability and the means at its disposition, reply to the requests on the part of the public for information and explanations.

II.—*Recueil International des Traités*

ARTICLE 6. One volume at least of the *Recueil international des traités* shall be published each year.

ARTICLE 7. Each volume shall contain a chronological table of contents in addition to the text of the documents communicated by the contracting or adhering governments.

ARTICLE 8. Each government shall receive copies of the *Recueil international des traités* in proportion to its contribution.

III.—*Budget—Division of Expenses of the International Bureau*

ARTICLE 9. The budget of the International Bureau is set approximately at 100,000 francs.

ARTICLE 10. This budget shall be maintained by a proportional contribution from the contracting or adhering States and from the returns from the subscriptions to the *Recueil* of the Union in addition to the shares of the various States.

ARTICLE 11. With a view to determining equitably the shares to be contributed by the contracting or adhering States, the latter are divided into six classes, each contributing in proportion to a certain number of units, *viz.*:

First class	25	units
Second class	20	"
Third class	15	"
Fourth class	10	"
Fifth class	5	"
Sixth class	3	"

ARTICLE 12. Each of the coefficients above given shall be multiplied by the number of States in the corresponding

class, and the sum of the products thus obtained shall furnish the number of units by which the total expense shall be divided. The quotient gives the unit of expense, and to obtain the amount of the contribution of each State to the expenses of the International Bureau it is sufficient to multiply this unit by the coefficient of the class to which this State belongs.

EXTRADITION ¹

In 1885 at Brussels, Mr. Albéric Rolin submitted to the Institute some criticisms with a view to the revision of some of these resolutions; ² discussion of these observations was deferred to the following session.³ At Heidelberg the Institute at its meeting of September 9, 1885, discussed at length the amendments proposed by Mr. Albéric Rolin and without taking any position with respect to their merits unanimously voted that the entire question of the conflict of laws regarding extradition be referred to the committee on the conflict of penal laws.⁴

At Lausanne, where Mr. Rolin was unable to be present, but where Mr. Lammasch had on his part formulated several amendments, the Institute on motion of Mr. Renault, reporter of the committee, adopted a motion "asking Mr. Albéric Rolin to investigate the questions raised by extradition for *political acts* (Articles 13 and 14 of the Resolutions of Oxford) and Mr. Lammasch on the subject of the *rights of the person extradited in the requesting country* (Article 26 of the same Resolutions.)" ⁵

These two members stated their conclusions in papers submitted to the Institute at its Hamburg session in 1891.⁶ Mr. Lammasch not having been able to attend that session nor the one at Geneva in 1892, the examination of his conclusions respecting Article 26 has not yet been taken up by the Institute in plenary session. The conclusions presented by Mr. Albéric Rolin relative to Articles 13 and 14 were the subject of preliminary discussion at Hamburg, where on September 10, 1891, the Institute passed a motion to examine them at the following meeting.⁷ At Geneva Mr. Albéric Rolin presented a new report accompanied by propositions with supporting reasons.⁸ After deliberation in the plenary session of September 8, 1892, the following four articles proposed by Mr. Rolin were adopted, the first three to take the place of Article 13 of the Resolutions of Oxford, and the fourth to take the place of Article 14: ⁹

¹ *Tableau général*, p. 103. See *ante*, p. 42.

² *Annuaire*, vol. 8, p. 128.

³ *Ibid.*, p. 167.

⁴ *Ibid.*, vol. 9, p. 141.

⁵ *Ibid.*, vol. 10, p. 158.

⁶ *Ibid.*, vol. 11, pp. 172-173.

⁷ *Ibid.*, p. 232.

⁸ *Ibid.*, vol. 12, pp. 156 *et seq.*

⁹ *Ibid.*, p. 182.

ARTICLE 1. Extradition is inadmissible for purely political crimes or offenses.

ARTICLE 2. Nor can it be admitted for unlawful acts of a mixed character or connected with political crimes or offenses, also called relative political offenses, unless in the case of crimes of great gravity from the point of view of morality and of the common law, such as murder, manslaughter, poisoning, mutilation, grave wounds inflicted wilfully with premeditation, attempts at crimes of that kind, outrages to property by arson, explosion or flooding, and serious thefts, especially when committed with weapons and violence.

ARTICLE 3. So far as concerns acts committed in the course of an insurrection or of a civil war by one of the parties engaged in the struggle and in the interest of its cause, they cannot give occasion to extradition unless they are acts of odious barbarity or vandalism forbidden by the laws of war, and then only when the civil war is at an end.

ARTICLE 4. Criminal acts directed against the bases of all social organization, and not only against a certain State or a certain form of government, are not considered political offenses in the application of the preceding rules.

ADMISSION AND EXPULSION OF ALIENS¹

At Hamburg, Mr. von Bar, the reporter, presented, with a report, *Draft international regulations on the admission and expulsion of aliens*.² At the same time another *Draft*, that of Mr. Féraud-Giraud, member of the committee,³ and some remarks by Mr. Westlake on the work of Mr. von Bar were referred to the Institute.⁴ In plenary session on the 8th of September, 1891, the assembly, as much for reasons of principle as for considerations of expediency, showed some hesitation in undertaking an exhaustive study of Mr. von Bar's draft at this session, and on the 12th of the same month, on the advice of the committee, deferred the debate to another meeting.⁵

At the Geneva meeting, there was no further objection to the discussion of Mr. von Bar's draft, further amended according to the advice of

¹ *Tableau général*, p. 135. See also *ante*, p. 88.

⁴ *Ibid.*, p. 313.

² *Annuaire*, vol. 11, p. 282.

⁵ *Ibid.*, pp. 316, 321.

³ *Ibid.*, p. 275.

many members of the committee, and it resulted, in the meeting of September 9, 1892, in the adoption of the following text.¹

INTERNATIONAL REGULATIONS ON THE ADMISSION AND EXPULSION OF ALIENS ²

The Institute of International Law,

Considering that, for each State, the right of admitting or not admitting aliens to its territory, or of admitting them only conditionally, or of expelling them, is a logical and necessary consequence of its sovereignty and its independence;

Considering, however, that humanity and justice require States not to exercise this right except with due regard, so far as is compatible with their own safety, for the right and the liberty of aliens who wish to enter their said territory or who are already there;

Considering that, from this international standpoint, it may be well to formulate, in a general way and for future application, some stable principles, the acceptance of which would not, however, imply any criticism of past acts;

Proposes, in the admission and expulsion of aliens, the observance of the following rules:

CHAPTER I.—PRELIMINARY PROVISIONS

ARTICLE 1. In the meaning of the present Regulations, all those are considered aliens who have no actual right of nationality in a State, without distinction as to whether they are simply passing through, or are resident or domiciled, or whether they are refugees or have entered the country of their own free-will.

ARTICLE 2. In principle, a State must not forbid entrance to or sojourn in its territory either to its subjects, or to those who, after having lost their nationality in the said State, have acquired no other.

¹ *Annuaire*, vol. 12, pp. 184-226.

² *Ibid.*, p. 218. This text is the one which has been agreed upon and numbered by the editing committee, by special order that it received from the Institute at the above-mentioned meeting.

ARTICLE 3. It is desirable that the admission and expulsion of aliens be regulated by law.

CHAPTER II.—CONDITIONS GOVERNING THE ADMISSION OF
ALIENS

ARTICLE 4. Cases of reprisal and retorsion are not subject to the following rules. However, aliens domiciled in a country with the express authority of the government, may not be expelled on the ground of reprisal or retorsion.

ARTICLE 5. Colonies where European civilization is not yet dominant are also excepted from the following rules.

ARTICLE 6. Free entrance of aliens to the territory of a civilized State, may not be generally and permanently forbidden except in the public interest and for very serious reasons, for example, because of fundamental differences in customs or civilization, or because of a dangerous organization or gathering of aliens who come in great numbers.

ARTICLE 7. The protection of national labor is not, in itself, a sufficient reason for non-admission.

ARTICLE 8. In time of war, internal dissension, or epidemic, the State shall have the right of temporarily restricting or prohibiting the entrance of aliens.

ARTICLE 9. Each State shall determine by law or by regulations, published a reasonable time before being put in force, rules for the admission or passage of aliens.

ARTICLE 10. The entrance or sojourn of aliens may not be made subject to the collection of excessive taxes.

ARTICLE 11. All essential changes in the conditions for admission and sojourn of aliens, including changes in the taxes which concern them, must be communicated as soon as possible to the governments of the States whose *ressortissants* are interested therein.

ARTICLE 12. Entrance to a country may be forbidden to any alien individual in a condition of vagabondage or beggary, or suffering from a malady liable to endanger the public health, or strongly suspected of serious offenses com-

mitted abroad against the life or health of human beings or against public property or faith, as well as to aliens who have been convicted of the said offenses.

ARTICLE 13. A State may, under exceptional circumstances, admit aliens temporarily only and with the understanding that they are forbidden to make their residence in the country, provided that, as far as possible, the prohibition shall be notified to each individual in writing.

The prohibition ceases to have effect if not repeated periodically at intervals not exceeding two years.

CHAPTER III.—CONDITIONS GOVERNING THE EXPULSION OF ALIENS

I.—*General Rules*

ARTICLE 14. Expulsion shall never be ordered for private interests, to prevent lawful competition, nor to stop just claims or actions and suits regularly brought before competent courts or authorities.

ARTICLE 15. Expulsion and extradition are independent of each other; a refusal to extradite does not involve renunciation of the right of expulsion.

ARTICLE 16. An expelled person who has taken refuge in a country to escape from criminal procedure, may not be given up, in an indirect way, to the prosecuting State, unless the conditions imposed with regard to extradition have been duly observed.

ARTICLE 17. Expulsion, since it is not a penalty, should be carried out with all possible consideration, and with due regard for the particular condition of the individual.

ARTICLE 18. An alien may be ordered to live in a certain place or not to leave a certain place, under penalty of expulsion for infringing the order.

ARTICLE 19. Expulsions, whether individual or extraordinary, must be notified, as soon as possible, to the governments whose *ressortissants* they concern.

ARTICLE 20. Periodically account shall be rendered, either to the national representative, or by means of an

official publication, of all expulsions, including those that have been reversed or revoked.

ARTICLE 21. Every expelled individual who considers himself a native or who holds that his expulsion is contrary either to a law or to an international treaty which forbids or expressly excludes it, has the right of appeal to a high judicial or administrative court, whose judgments are entirely independent of the government.

But, notwithstanding the right of appeal, expulsion may be carried out provisionally.

ARTICLE 22. The State may ensure execution of orders of expulsion by subjecting the expelled persons who infringe them to prosecution in the courts and to sentence at the expiration of which the condemned shall be escorted under public guard to the frontier.

II.—*On Various Kinds of Expulsion*

ARTICLE 23. *Definitive extraordinary* (or *en masse*) expulsion applies to classes of individuals; when it has been ordered, those who have been expelled shall not be at liberty to return to the country upon the expiration of a period to be determined beforehand.

ARTICLE 24. *Temporary extraordinary* (or *en masse*) expulsion applies to classes of individuals, as the result of war or serious disturbances arising in the country; it is effective only during the war or for a fixed period.

ARTICLE 25. *Ordinary* expulsion is purely individual.

ARTICLE 26. Definitive extraordinary expulsion requires a special law, or at least a special decree of the sovereign power. The law or the decree, before being put into execution, shall be published a reasonable time in advance.

ARTICLE 27. Temporary extraordinary expulsion may, at the end of the war or of the fixed period, be converted into ordinary expulsion or definitive extraordinary expulsion.

The period originally determined upon may be extended once.

III.—*Individuals Who May be Expelled*

ARTICLE 28. The following may be expelled:

1. Aliens who have entered the country by fraud, in violation of the regulations governing the admission of aliens; but, if there is no other reason for expulsion, they may no longer be expelled after having resided six months in the country;

2. Aliens who have taken up their domicile or their residence within the boundaries of the country, in violation of a formal prohibition;

3. Aliens who, at the time that they crossed the frontier, were suffering from diseases liable to endanger the public health;

4. Aliens in a state of beggary or vagrancy, or who are a burden on the public;

5. Aliens found guilty by the courts of their own country of offenses of a certain degree of seriousness;

6. Aliens condemned abroad or threatened with prosecution for serious offenses which, according to the laws of the country or in accordance with extradition treaties concluded by the State with other States, might give rise to their extradition;

7. Those aliens who are guilty of instigating the commission of serious offenses against public safety, even though the acts of instigation, as such, are not punishable under the law of the land and though the offenses were only to be committed abroad;

8. Those aliens who, in the territory of a State, are guilty or strongly suspected of attacks, through the press or otherwise, upon a foreign State or sovereign, or upon the institutions of a foreign State, provided that these acts be punishable under the laws of the expelling State, if committed by natives abroad and directed against that State itself;

9. Aliens who, during their stay in the territory of a State, are guilty of attacks or outrages published in the foreign press against the State, the nation, or the sovereign;

10. Aliens who, in time of war or when war is impending, endanger the safety of the State by their conduct.

ARTICLE 29. Alien refractory conscripts and deserters may be forbidden to sojourn or to travel in a zone adjacent to the country whence they come, without prejudice to more severe provisions of international treaties.

IV.—*Formalities of Expulsion*

ARTICLE 30. The act decreeing expulsion shall be notified to the expelled individual. The reasons on which it is based must be stated in fact and in law.

ARTICLE 31. If the person expelled has the right of appeal to a high court, judicial or administrative, he shall be informed, by the act itself, of this circumstance and of the period within which the appeal must be made.

ARTICLE 32. The act shall also mention the period within which the alien must quit the country. This period shall not be less than one full day. If the expelled is at liberty, no compulsion shall be used against him during this period.

ARTICLE 33. An alien who has been ordered to quit the country shall be required to designate the frontier by which he intends to leave; he shall receive a route ticket, giving his itinerary and the length of his stay in each place. In the event of infringement, he shall be escorted to the frontier under public guard.

V.—*Appeal*

ARTICLE 34. It is desirable that, in cases of ordinary expulsion, even outside of those cases where the person is declared by law exempt from expulsion, the expelled person be given a right of appeal to a high judicial or administrative court, independent of the government.

ARTICLE 35. The court shall render judgment only upon the legality of the expulsion; it shall not pass upon the conduct of the person, nor the circumstances which have appeared to the government to render expulsion necessary.

ARTICLE 36. In the case mentioned in No. 10 of Article 28, there shall be no appeal.

ARTICLE 37. Expulsion may be provisionally carried out, notwithstanding the right of appeal.

ARTICLE 38. In so far as an expulsion shall be in conformity with the principles of international law stated in these regulations, the government which has ordered it shall be free from all diplomatic claims.

ARTICLE 39. A government may always revoke the expulsion or temporarily suspend its effects.

VI.—*Expulsion of Resident Aliens in Particular*

ARTICLE 40. Aliens resident in the country may not be expelled except under Provisions 7-10 of Article 28 and, under No. 6 of the said article, unless the sentences that have been passed upon them abroad have not yet been fully served or remitted, or unless the sentence pronounced by a foreign court is subsequent to their establishment in the country.

ARTICLE 41. The expulsion of aliens, domiciled, resident, or engaged in business, shall not be ordered except in such a way as not to betray the confidence that they have reposed in the laws of the State. It shall allow them liberty to use, either directly, if possible, or through the intervention of a third person to be chosen by them, every lawful means to settle up their business and their interests, both assets and liabilities, in the country.

EXTRADITION—REVISION OF THE FINAL ARTICLE OF THE OXFORD RESOLUTIONS ¹

The Institute having decided to submit to revision Article 26 ² of the resolutions voted at Oxford, September 9, 1880, Mr. Lammasch was appointed reporter. At the Paris session of 1894 Messrs. Lammasch and Renault presented a report,³ followed by a supplementary report of Mr. Lammasch ⁴ and a communication from Mr. Kleen.⁵ The discussion in plenary session took place March 27, 1894, and terminated in the following resolution: ⁶

¹ *Annuaire*, vol. 20, p. 305.

² *Ante*, p. 45.

³ *Annuaire*, vol. 13, p. 17.

⁴ *Ibid.*, p. 27.

⁵ *Ibid.*, p. 30.

⁶ *Ibid.*, pp. 332, 335.

The person extradited shall have the right to invoke the prescriptions of treaties, laws of the requesting country relative to extradition, and the very instrument of extradition, and, when the case arises, to claim that they have been violated.

INTERNATIONAL UNION FOR THE SUPPRESSION OF THE MARITIME SLAVE TRADE ¹

In investigating the question of territorial occupation entered on the program of the Brussels meeting of 1885, Mr. Engelhardt had considered provisions concerning the slave trade. The Institute, at the meeting at Lausanne in 1888, appointed a committee to investigate this subject.

After the adoption of the General Act of the Brussels Conference of July 2, 1890, difficulties arose concerning the ratification by certain Powers of the provisions relating to the slave trade, and the Institute, in its meeting held at Hamburg, September 12, 1891, expressed a *vœu* aiming at the ratification of the Act of Brussels in its entirety.² The first report of Mr. Engelhardt was presented at the same meeting at Hamburg.³ It was accompanied by a first-draft of resolutions on the supervision of maritime slave trade.⁴ At the Paris meeting in 1894, Mr. Engelhardt, with the concurrence of Mr. Martens, presented a further memoir and a new preliminary draft.⁵ The discussion in plenary session took place March 30, 1894.⁶ It resulted in the following resolution:

DRAFT REGULATIONS ON THE SUPERVISION OF SLAVE SHIPS ⁷

Considering the *procès-verbal* of the meeting of the Institute under date of September 7, 1888, recording the creation of a special committee to investigate the question of *the slave trade and the regulation of the supervision of slave ships*;

Considering the General Act of the Brussels Conference of July 2, 1890, especially Articles 21 and 23, which restrict repressive action with respect to maritime slave trade to a definite portion of the Indian Ocean, and to ships of less than 500 tons burden;

Considering the reports and conclusions presented Octo-

¹ *Ibid.*, vol. 20, p. 364.

⁴ *Ibid.*, p. 262.

⁷ *Ibid.*, p. 344.

² *Ante*, p. 94.

⁵ *Ibid.*, vol. 13, p. 36.

³ *Annuaire*, vol. 11, p. 241.

⁶ *Ibid.*, p. 335.

ber 1890 and 1893 by Mr. Ed. Engelhardt, reporter of the said committee of the Institute;¹

Considering the Resolution of September 12, 1891, in which the Institute, though formulating a *vœu* that the General Act of Brussels receive as soon as possible the ratification of the governments which coöperated in drawing it up, reserved the right of considering at some later date and in due time what modifications or improvements might be introduced in this act;

The Institute of International Law, assembled at Paris, March 30, 1894, expresses the opinion that it would be well to adopt a single system of supervision and repression of the slave trade under the double restriction imposed by Articles 21 and 23 of the General Act of Brussels, and that to this end it would be desirable for all naval Powers to come to an agreement on the basis of the following provisions:

ARTICLE 1. If the presumed nationality of a merchant ship, judging from the flag which it flies, can seriously be questioned, in consequence either of positive information, or of material indications which suggest that the ship does not belong to the nation whose flag it flies, a foreign war-ship that encounters it may proceed to verify the pretended nationality.

ARTICLE 2. This verification shall consist in an examination of the documents authorizing the flying of the flag, which documents shall conform to a single and absolutely obligatory type.

Native ships (*boutres, dhowes*) may be required to have, in addition to documents establishing nationality, a muster-roll and a manifest of passengers.

ARTICLE 3. All search on any other grounds than that of nationality is forbidden, without prejudice to the provisions of Article 2, paragraph 2.

ARTICLE 4. When, in consequence of the verification provided for in Article 2 above, the ship shall be suspected of fraud, it shall be taken before the nearest authority of the nation whose flag it has been flying.

¹ Cf. *Annuaire*, vol. 11, pp. 235 *et seq.*, and vol. 13, p. 36.

This authority shall proceed to a preliminary investigation in the presence of the capturing officer.

DEFINITION AND STATUS OF THE TERRITORIAL SEA ¹

The question was placed on the order of the day of the session of Lausanne in 1888. Messrs. Renault and Barclay were appointed reporters. At the Hamburg session in 1891, Mr. Renault made a report on the subject.² To this report was added a note by Mr. Aubert.³ The first exchange of views in plenary session took place September 8 and 10, 1891.⁴ At the Geneva session in 1892 there were presented: a report by Mr. Barclay, a communication from Mr. Kleen, a communication from Mr. Aubert, and modified conclusions by Messrs. Barclay, Desjardins, Féraud-Giraud, Harburger, Hartmann, Olivart, Perels and Edouard Rolin.⁵ These documents led to an exchange of views in plenary session September 10, 1892.⁶ At the Paris session in 1894 Mr. Barclay presented a new report.⁷ The discussion in plenary session took place March 28, 29 and 31, 1894, and resulted in the adoption of the following resolutions:⁸

RULES ON THE DEFINITION AND RÉGIME OF THE TERRITORIAL SEA ⁹

The Institute,

Considering that there is no reason to confound in a single zone the distance necessary for the exercise of sovereignty and for the protection of coastwise fishing and that which is necessary to guarantee the neutrality of non-belligerents in time of war;

That the distance most generally adopted of three miles from low-water mark has been recognized as insufficient for the protection of coastwise fishing;

That this distance moreover does not correspond to the actual range of guns placed on the coast;

Has adopted the following provisions:

¹ *Ibid.*, vol. 20, p. 341.

² *Ibid.*, vol. 11, p. 133.

³ *Ibid.*, p. 136.

⁴ *Ibid.*, pp. 147 *et seq.*

⁵ *Ibid.*, vol. 12, pp. 104, 136, 145, 151.

⁶ *Ibid.*, pp. 152 *et seq.*

⁷ *Ibid.*, vol. 13, p. 125.

⁸ *Ibid.*, pp. 281 *et seq.*

⁹ *Ibid.*, p. 328.

ARTICLE 1. The State has a right of sovereignty over a zone of the sea washing the coast, subject to the right of innocent passage reserved in Article 5.

This zone bears the name of territorial sea.

ARTICLE 2. The territorial sea extends six marine miles (60 to a degree of latitude) from the low-water mark along the full extent of the coasts.

ARTICLE 3. For bays, the territorial sea follows the sinuities of the coast, except that it is measured from a straight line drawn across the bay at the place nearest the opening toward the sea where the distance between the two sides of the bay is twelve marine miles in width, unless a continued usage of long standing has sanctioned a greater breadth.

ARTICLE 4. In case of war a neutral littoral State has the right to fix, by declaration of neutrality or by special notification, its neutral zone beyond six miles up to the range of coast artillery.

ARTICLE 5. All ships without distinction have the right of innocent passage through the territorial sea, saving to belligerents the right of regulating such passage and, for the purpose of defense, of forbidding it to any ship, and saving to neutrals the right of regulating the passage of ships of war of all nationalities through the said sea.

ARTICLE 6. Crimes and offenses committed on board foreign ships passing through the territorial sea by persons on board of them, against persons or things on board the same ships, are as such outside the jurisdiction of the littoral State, unless they involve a violation of the rights or interests of the littoral State or of its *ressortissants* not forming part of the crew or passengers.

ARTICLE 7. Ships which pass through territorial waters shall conform to the special regulations decreed by the littoral State in the interest and for the security of navigation or as matter of maritime police.

ARTICLE 8. Ships of all nationalities are subject to the jurisdiction of the littoral State by reason of the simple fact that they are in the territorial waters, unless they are only passing through them.

The littoral State has the right to continue on the high sea a pursuit commenced in the territorial sea, and to seize and pass judgment on the ship which has committed a breach of law within its waters. In case, however, of capture on the high sea, the fact shall be notified without delay to the State whose flag the ship flies. The pursuit must be interrupted as soon as the ship enters the territorial sea of its own country or of a third Power. The right to pursue ceases as soon as the ship has entered a port of its own country or of a third Power.

ARTICLE 9. The peculiar situation of ships of war and the ships assimilated to them is reserved.

ARTICLE 10. The provisions of the preceding articles apply to straits whose breadth does not exceed twelve miles, subject to the following modifications and distinctions:

1. Straits whose shores belong to different States form part of the territorial sea of the littoral States, which will exercise their sovereignty to the middle line.

2. Straits whose shores belong to the same State and which are indispensable to maritime communication between two or more States other than the littoral State always form part of the territorial sea of such State, whatever the distance between the coasts.

3. Straits which serve as a passage from one open sea to another open sea can never be closed.

ARTICLE 11. The *régime* of straits actually governed by special conventions or usages remains reserved.

PROTECTION OF LITERARY AND ARTISTIC PROPERTY—REVISION OF THE CONVEN- TION OF BERNE ¹

The question was entered on the program at the meeting at Hamburg in 1891, on the motion of Mr. d'Orelli, who was appointed reporter, and who was succeeded by Mr. Roguin. At the meeting at Paris in 1894, Mr. Roguin made a preliminary statement.² At the Cambridge meeting in

¹ *Annuaire*, vol. 20, p. 366.

² *Ibid.*, vol. 13, p. 350.

1895, Messrs. Roguin and Renault presented a report.¹ The discussion in plenary session took place April 10, 12 and 14, 1895. It resulted in the following resolutions:²

The Institute of International Law has the honor to recommend the following changes to the next diplomatic conference entrusted with the revision of the Convention of Berne of September 9, 1886, creating an International Union for the protection of works of literature and art.

ARTICLE 2. Paragraph 2 to read as follows: "The enjoyment of these rights *and the power to enforce them under the law shall be subject only* to the fulfilment of the conditions and formalities prescribed by the legislation of the country where the work originates."

The second part of paragraph 3 to be omitted from the words "or if the publication shall have been simultaneously effected in several countries of the Union, that one of them whose legislation grants the shortest term of protection." Thus, the duration of the period of protection shall be always that provided by law in the country where protection is claimed.

ARTICLE 5. To increase from ten to *twenty* years the minimum duration of the period of protection for *translations*.

ARTICLE 7. To insert in the text itself of the convention the explanation of the *procès-verbal* declaring that the provision of the first paragraph of Article 7 shall apply only to writings on the politics of the day, and not to *essays or studies treating of questions of politics or social economics of a more general import*, these last remaining subject to common law.

To say expressly that *articles of science and art* are subject to the rule of Article 7, paragraph 1, of the convention of 1886.

To state expressly that *romans-feuilletons* are subject to the same rules as literary works published in volumes.

To enact expressly that *political articles, news of the day*

¹ *Annuaire*, vol. 14, p. 93.

² *Ibid.*, p. 287.

and miscellaneous news items may be reprinted on the sole condition that the exact source be stated.

ARTICLE 9.¹ To word paragraph 3 as follows: "The stipulations of Article 2 likewise apply to the public performance of unpublished musical works or of published works, *without its being necessary for the composer to state expressly on the title-page or at the beginning of the work that he forbids the public performance of it, subject to the provisions of the law of the country whence it emanates.*"

ARTICLE 10.¹ To omit the second paragraph.

In the first paragraph, to add after . . . *adaptations* . . . the words: *dramatization of a novel or vice versa.*

To add a final paragraph, worded thus:

"The public performance of musical compositions by mechanical instruments shall be governed by the same rules as public performance by any other means."

ARTICLE 14. To insert a provision to allow, within strictly determined time-limits, the sale of reproductions finished or in preparation before the treaty goes into effect. To this end they shall bear stamps or other distinctive marks.

To insert in the convention a provision forbidding the reproduction by photography of a protected work of literature or art.

PENAL SANCTION TO BE GIVEN TO THE GENEVA CONVENTION OF AUGUST 22, 1864²

The question was entered on the program at the meeting at Paris in 1894, on the motion of Mr. Moynier, who, with Mr. Engelhardt, was appointed reporter. At the Cambridge meeting in 1895, Messrs. Moynier and Engelhardt presented their report together with a draft convention supplementary to the Geneva Convention and a draft resolution.³ To these Mr. Engelhardt added a further note.⁴

¹ For the circumstances under which Articles 9 and 10 were passed, see *Annuaire*, vol. 14, p. 289. Fifteen members having desired to make reservations of these articles, their names were entered in the minutes. They were Messrs. von Bar, Barclay, den Beer Poortugael, Buzzati, Catellani, Harburger, Holland, Kapoustine, Lammasch, Martens, Matzen, Montluc, Reay, Edouard Rolin and Westlake. The following were absent at the time of the vote: Messrs. Baker, Goudy, Lawrence, Leech, Rolin-Jaequemyns and Sacerdoti.

² *Ibid.*, vol. 20, p. 361.

³ *Ibid.*, vol. 14, p. 17.

⁴ *Ibid.*, p. 170.

The discussion in plenary session took place August 9 and 12, 1895.¹
It resulted in the adoption of the following resolutions:

I.—DRAFT CONVENTION SUPPLEMENTARY TO THE CONVENTION OF AUGUST 22, 1864²

The Governments of ——— desiring mutually to bear witness to their earnest desire to assure the observance of the Geneva Convention of August 22, 1864, by the persons and within the territories subject to their authority, have agreed upon the following articles:

ARTICLE 1. Each of the contracting Parties shall undertake to elaborate a penal law covering all possible infractions of the Geneva Convention.

ARTICLE 2. Within a period of three years, these laws shall be promulgated and notified to the Swiss Federal Council, which shall communicate them through diplomatic channels to the signatory Powers of the Geneva Convention.

The changes which any of the contracting States shall later make in its penal code shall also be notified to the Swiss Federal Council.

ARTICLE 3. A belligerent State which shall make complaint of a violation of the Geneva Convention by the *ressortissants* of another belligerent State shall have the right to request, through the mediation of a neutral State, that an inquiry be instituted. The accused State shall be obliged to have its authorities institute this inquiry, to make known the result to the neutral State which has acted as intermediary, and, if necessary, to cause the guilty to be punished under the criminal laws.

ARTICLE 4. The States signatory to the Geneva Convention which shall not have subscribed in the first instance to the present act, may do so at any time by a notification in the form prescribed for adhering to the Convention itself, addressed to all the States that are already signatories.

¹ *Annuaire*, vol. 14, p. 174.

² *Ibid.*, p. 188.

II.—*Vœu* UTTERED BY THE INSTITUTE

In order to give to a belligerent State whose *ressortissants* are accused of having violated the Geneva Convention, every opportunity to prove its impartiality and the innocence of the accused, the Institute of International Law utters the *vœu* that the Powers signatory to the Geneva Convention recognize the existence and the authority of an International Red Cross committee, whose members may, at the request of the accused belligerent State, be delegated by it to take part in an inquiry at the seat of war, under the auspices of the competent national authorities.

DIPLOMATIC IMMUNITIES ¹

At the meeting at Lausanne in 1888, on the motion of Messrs. Engelhardt, Lehr and Rolin-Jaequemyns, the question of diplomatic and consular immunities was entered on the program. Mr. Lehr was appointed reporter on diplomatic immunities, and Mr. Engelhardt on consular immunities.²

At the meeting in Hamburg in 1891, Mr. Lehr submitted a statement summarizing the principles underlying diplomatic immunities, and later a supplementary report.³ In the discussion, in plenary session, which took place September 1, 1894, the Institute adopted the general principle and the provisions concerning inviolability.⁴ At the meeting at Cambridge in 1895, the discussion was resumed in the sessions of August 12 and 13.⁵ It resulted in the adoption on the latter date of the following regulations:

REGULATIONS ON DIPLOMATIC IMMUNITIES ADOPTED BY THE INSTITUTE AT THE SESSION OF AUGUST 13, 1895 ⁶

ARTICLE 1. The persons of public ministers shall be inviolable. They shall enjoy, in addition, "extritoriality," in the sense and to the degree indicated hereafter, and a certain number of immunities.

¹ *Ibid.*, vol 20, p. 348.

² See *post*, p. 123.

³ *Annuaire*, vol. 11, p. 395.

⁴ *Ibid.*, p. 404.

⁵ *Ibid.*, vol. 14, p. 203.

⁶ *Ibid.*, p. 240.

SECTION I.—INVIOABILITY

ARTICLE 2. The privilege of inviolability is extended to:

1. All classes of public ministers who regularly represent their sovereign or their country;

2. All persons included in the official personnel of a diplomatic mission;

3. All persons included in its unofficial personnel, with this exception, that if they belong to the country where the mission is located, they shall enjoy this privilege only when in the diplomatic residence.

ARTICLE 3. The government to which the minister is accredited shall be required to refrain from all offense, injury, or violence toward the persons enjoying this privilege, to show them due respect and to protect them, by unusually severe penalties, from all offense, injury, or violence on the part of the inhabitants of the country, so that they may attend to all their duties with perfect freedom.

ARTICLE 4. This privilege shall apply to everything necessary to the accomplishment of the said duties; especially to personal effects, papers, archives, and correspondence.

ARTICLE 5. It shall continue to be effective as long as the minister or diplomatic official remains, in his official capacity, in the country to which he has been sent.

It shall hold good, even in time of war between the two Powers, for as long a time as is necessary for the minister to leave the country with his staff and his effects.

ARTICLE 6. Inviolability may not be invoked:

1. In the case of lawful defense on the part of individuals against acts committed by persons who enjoy the privilege;

2. In case of risks run by the said persons, voluntarily or unnecessarily;

3. In case of reprehensible acts committed by them, compelling the State to which the minister is accredited to take defensive or precautionary measures; but, except in cases of extreme necessity, this State must confine itself to making the facts known to the government of the said minister, to requesting the punishment or the recall of the guilty official,

and, if necessary, to surrounding his house to prevent illegal communications or public expressions of opinion.

SECTION II.—EX TERRITORIALITY

ARTICLE 7. A public minister abroad, functionaries officially connected with his mission, and the members of their families living with them shall retain their original residence and remain subject to the laws of this residence, in so far as the laws and jurisdiction of the residence apply.

Succession to their estate is governed by the laws of the said residence, and local authorities shall not have the right to interfere, unless so requested by the head of the mission.

ARTICLE 8. The acts which a public minister or his representative performs personally, or in which he intervenes in his official capacity and according to the law of his country, with regard to his nationals, shall be valid, provided that the said law shall have been observed, and notwithstanding the *lex loci*, as would be the case with acts of the same kind performed or occurring in the minister's own country.

Acts in which the minister or his representative intervenes, even in his official capacity, shall conform to the *lex loci*: 1. If they concern a person who does not belong to the country which the minister represents or who, for some reason, is subject to the jurisdiction of the country; 2. If they are to be effective in the country where the mission is stationed, and are such that they could not be validly performed outside the country or in any other manner. The same law governs the acts done in the diplomatic residence, but in which the minister or his agents are not entitled to intervene in their official capacities.

ARTICLE 9. The minister's residence is exempt from military quarterings and from the taxes which are substituted therefor.

No officer of the public authority, administrative or judicial, may enter therein in the performance of his duty except with the express consent of the minister.

ARTICLE 10. The minister may have a chapel of his

own religion in his house, but upon condition that he refrain from all external manifestation of it in a country where the public exercise of that religion is not permitted.

SECTION III

A.—*Tax Immunities*

ARTICLE 11. A public minister abroad, the functionaries officially connected with his mission and the members of their families living with them shall be exempt from paying:

1. Direct personal taxes and sumptuary taxes;
2. General taxes on wealth, either on the principal or on the income;
3. War-taxes;
4. Customs duties on articles for their personal use.

Each government shall have the right to indicate what proofs are required in order to secure these exemptions from taxes.

B.—*Legal Immunities*

ARTICLE 12. A public minister abroad, the functionaries officially connected with his mission and the members of their families living with them are exempt from the jurisdiction of all courts, civil or criminal, of the State to which they are accredited; in principle, they shall be under the jurisdiction, civil or criminal, only of the courts of their own country. The plaintiff may appeal to the court in the capital of the minister's country, subject to the right of the minister to prove that he has another residence in his country.

ARTICLE 13. With regard to crimes, the persons mentioned in the preceding article shall remain subject to their national criminal law, as if the crimes had been committed in their own country.

ARTICLE 14. Immunity continues after retirement from office in so far as acts connected with the exercise of the said duties are concerned. As regards acts not connected

therewith, immunity may not be claimed except for so long as the individual remains in office.

ARTICLE 15. Persons belonging by their nationality to the country to whose government they are accredited, may not take advantage of the benefits of immunity.

ARTICLE 16. Legal immunity may not be invoked:

1. In case of proceedings instituted as a result of engagements contracted by the exempt person, not in his official capacity, but in the exercise of a profession carried on by him in the country concurrently with his diplomatic duties;

2. With regard to realty actions, including possessory actions relating to property, real or personal, which is in the country.

Legal immunity remains effective even in case of offenses endangering public order or safety or of a crime attacking the safety of the State, without prejudice to the right of the territorial government to take such conservatory measures as shall be deemed advisable (Article 6, Section 3).

ARTICLE 17. Persons enjoying legal immunity may refuse to appear as witnesses before a territorial court, on condition that, if they are so requested through diplomatic channels, they shall give their testimony, in the diplomatic residence, to a magistrate of the country sent to them for that purpose.

CONSULAR IMMUNITIES¹

At the meeting at Lausanne in 1888, on the motion of Messrs. Engelhardt, Lehr and Rolin-Jacquemyns, the question of diplomatic and consular immunities was entered on the program. Mr. Engelhardt, having been appointed reporter on the question of consular immunities, made at the time of the session of Lausanne in 1888 a communication accompanied by proposals concerning consular archives.² At the session of Hamburg in 1891 he communicated to the Institute three

¹ *Annuaire*, vol. 20, pp. 348, 353. See *ante*, p. 119.

² *Annuaire*, vol. 10, p. 275.

memoirs.¹ At the Geneva session in 1892 a fourth memoir was communicated by him.² At the Venice session in 1896 he made a new report accompanied by draft regulations.³ The discussion in plenary session took place September 25 and 26⁴ and resulted in the adoption on the latter date of the following resolutions:⁵

PRELIMINARY PART

ARTICLE 1. The title of consul belongs only to agents of the foreign service who, being *ressortissants* of the State they represent, exercise no functions other than those of consul (*consules missi*).

Hereafter the following shall be designated consular agents:

(a) Consuls who are nationals, that is *ressortissants* of the sending State, but who exercise other functions or have some other calling;

(b) Consuls who by nationality belong either to the State in which they are commissioned or to some State other than the sending State, without regard to whether they exercise or do not exercise other functions or callings.

ARTICLE 2. Consuls and consular agents are subject to the territorial laws and jurisdiction, save for the exceptions specified under Parts I and II below.

ARTICLE 3. To entitle consuls or consular agents to be admitted and recognized as such, they must present their commissions, on the production of which they will receive the *exequatur*.

On the presentation of the *exequatur*, the superior authority of the district in which the said agents are directed to reside will give the necessary orders to the other local authorities in order that they may be protected in the exercise of their functions and that the immunities, exemptions, and privileges conferred by these regulations may be guaranteed to them.

¹ *Annuaire*, vol. 11, p. 348.

² *Ibid.*, vol. 12, p. 275.

³ *Ibid.*, vol. 15, pp. 133, 140.

⁴ *Ibid.*, p. 273.

⁵ *Ibid.*, p. 304.

In case the territorial government should deem it advisable to withdraw the exequatur from a consul, it should previously so inform the government to which the consul belongs.

PART I.—CONSULS

ARTICLE 4. Consuls enjoy personal immunity under the conditions and within the limits specified in Articles 5, 6, 7 and 8, below.

ARTICLE 5. They are not amenable to the local courts for acts which they perform in their official capacity and within the limits of their powers. The exceptions to this rule should be provided and defined by treaty.

If an individual considers himself injured by the act of a consul done in the discharge of his duties, he shall address his complaint to the territorial government, which will take it up, if there is reason to do so, through the diplomatic channel.

ARTICLE 6. Except as specified in Article 5 above, consuls are amenable to the courts of the country in which they exercise their functions as regards both civil and criminal matters.

Nevertheless, every proceeding directed against a consul is suspended until his government, duly notified through the diplomatic channel, has been able to confer with the government of the receiving State on a fitting settlement of the incident.

This previous notice is not necessary:

1. In case of a flagrant offense or of a crime;
2. In suits *in rem*, including suits for possession, whether relating to personal property or to real estate situated in the country;
3. When the consul himself has begun the litigation or accepted suit in the local courts.

ARTICLE 7. In no case may consuls be arrested or detained, except for grave infractions of the law.

ARTICLE 8. They are not bound to appear as witnesses

before the local tribunals. Their testimony should be taken at their residence by a magistrate appointed *ad hoc*.

In exceptional cases, where the appearance of the consul in person before the magistrate exercising civil or criminal jurisdiction is deemed indispensable and the consul refuses to accede to the invitation addressed to him to appear before the competent judge, the territorial government should have recourse to the diplomatic channel.

ARTICLE 9. The official residence of consuls and the premises occupied by their office and archives are inviolable.

No administrative or judicial officer may invade them under any pretext whatsoever.

If a fugitive from justice takes refuge in the consulate, the consul is bound to hand him over on the simple demand of the authorities.

ARTICLE 10. In order especially to ensure the inviolability of the consular archives, the foreign agent shall transmit through the medium of the diplomatic mission to the authorities of the country a statement describing the several premises composing the office of the consulate. This should be done at the time the consul enters upon his duties and whenever the office is transferred from one building to another or any important change is made in the arrangement of the office.

The above-mentioned statement shall be verified each time by the receiving State.

ARTICLE 11. Consuls should refrain from placing in the archives and in the rooms of their office documents and objects not connected with their service.

The offices of the consulate, if distinct from the rooms serving as the abode of the consul, may be installed in the same building.

ARTICLE 12. If the consul, when ordered by the judicial authority to hand over documents in his possession, refuses to deliver them, the administrative authority shall have recourse to the territorial government, which will take the matter up, if there be occasion, through the diplomatic channel.

ARTICLE 13. Consuls are excused from paying: (1) direct personal taxes and sumptuary taxes; (2) general taxes on wealth, either on capital or income; (3) war taxes.

ARTICLE 14. Consuls may place above the outer door of the consulate the arms of their country, with the inscription: "Consulate of _____."

They may display the flag of their country upon the consular building on public occasions unless they reside in the city where their government is represented by a diplomatic mission.

They are likewise authorized to raise this flag upon the boat they use in the exercise of their functions.

ARTICLE 15. Consuls are permitted to correspond with their government and with the political mission of their country by telegraphic dispatches in cipher or by means of messengers provided with a passport *ad hoc*.

It is likewise permissible for them to entrust their official correspondence to the captains of vessels of their nationality at anchor in the port of their residence.

In case of an epidemic, the disinfection of letters intended for consuls takes place in the presence of a consular delegate.

ARTICLE 16. In case of the decease or the unlooked-for disability of the consul, the consular officer of next highest rank shall be deemed to have the right to carry on the business of the consulate, on condition that he produce in due time before the local authority the official document confirming him in his provisional incumbency.

To this end it is the duty of the consul to present to the local authority the officer designated contingently to replace him *ad interim*.

This officer shall, during his incumbency, enjoy the immunities and privileges accorded to consuls by these regulations.

ARTICLE 17. There is no distinction, as regards immunities, between consuls general, consuls and vice consuls.

It is understood that agents of this last category, in so far as they are in charge of vice consulates, must satisfy the

conditions as to nationality and the other conditions mentioned in the first paragraph of Article 1 of these regulations.

In official ceremonies to which they are invited, consuls general, consuls and vice consuls take precedence according to their rank, and in each rank, according to the date of their entrance upon the discharge of their functions.

PART II.—CONSULAR AGENTS

ARTICLE 18. When civil or criminal suits are brought against consular agents, the local courts shall be competent to take cognizance of them directly, unless it be established that the said agents have acted in their official capacity.

ARTICLE 19. Consular agents are exempt from taxes falling specially on the building or part of the building occupied by their consular office.

With this exception, they pay both national and local taxes.

ARTICLE 20. Articles 10, 11 paragraph 1, 12 and 14 apply to consular agents, with this difference as regards Article 14, that the coat of arms placed over the outer door of their office shall bear the inscription: "Consular Agency of _____."

The office of consular agents, including the place in which their archives are kept, must always be separate from their personal business offices.

ARTICLE 21. Consular agents may correspond directly, upon official business, with the administrative and judicial authorities of their respective districts.

Vœu ADOPTED BY THE INSTITUTE IN THE SAME SESSION

The Institute, having adopted the Regulations on immunities of consuls, expresses the wish that governments whose functionaries may be benefited by them will exercise the greatest care in the choice of such functionaries, to the end that they may be worthy in all respects of the immunities above specified.

INTERNATIONAL REGULATION OF CONTRABAND OF WAR¹

The question was entered on the program at the meeting at Geneva in 1892 on the motion of Mr. Kleen, who, with Mr. Brusa, was appointed reporter. The originator of this proposition published a preliminary memoir with a first-draft entitled: *On contraband of war and traffic forbidden to neutrals*. At the Paris meeting of 1894, notes of General den Beer Poortugael and Mr. Lardy were presented; the reporters also made a report with the first-draft of the committee.² A new first-draft was submitted by the reporters at the Cambridge meeting in 1895. It was accompanied by remarks submitted by General den Beer Poortugael and new proposals made by Mr. Perels.³ At the Venice meeting in 1896, a final report with a compromise project was presented by Messrs. Kleen and Brusa.⁴ The discussion in plenary session took place September 29, 1896,⁵ and it resulted in the adoption of the following resolutions:⁶

A.—*Contraband*

SECTION 1. The following articles are contraband of war: 1. arms of all kinds; 2. munitions of war and explosives; 3. military *matériel* (articles of equipment, gun-mountings, uniforms, etc.); 4. vessels fitted out for war; 5. instruments designed exclusively for the immediate manufacture of munitions of war; when these various articles are transported by sea for the account of or addressed to a belligerent.

An enemy destination is presumed when the shipment goes to one of the enemy's ports, or to a neutral port which, according to incontestable proofs and indisputable facts, is only an intervening point, with ultimate enemy destination in the same commercial transaction.

SECTION 2. In the term *munitions of war*, shall be included articles which, to be used directly in war, need only to be assembled or combined.

SECTION 3. An article shall not be considered contraband simply because it is intended to be used to aid or to

¹ *Annuaire*, vol. 20, p. 374.

² *Ibid.*, vol. 13, pp. 50, 67, 75.

³ *Ibid.*, vol. 14, pp. 33, 43, 58.

⁴ *Ibid.*, vol. 15, p. 98.

⁵ *Ibid.*, p. 205.

⁶ *Ibid.*, p. 230.

favor an enemy, nor because it could be useful to an enemy or used by him for military purposes, nor because it is meant for his use.

SECTION 4. Are and shall remain abolished those so-called classes of contraband designated under the names, either of conditional contraband, articles (*usus ancipitis*) which may be used by a belligerent for military purposes, but the use of which is essentially peaceful, or of *accidental* contraband, when the said articles are not used specially for military purposes except in certain circumstances.

SECTION 5. Nevertheless, the belligerent has the right, if he wishes and subject to his paying a just indemnity, of sequestration or preëmption with regard to articles which are bound for a port of his adversary and which may be used either for purposes of peace or of war.

B.—*Transport Service*

SECTION 6. To attack or to hinder the transportation of the following diplomats or diplomatic messengers is forbidden: 1. neutrals; 2. those accredited to neutral governments; 3. those sailing under a neutral flag between neutral ports or between a neutral and a belligerent port.

On the other hand, transportation of diplomats of the enemy accredited to his ally is, except for regular and ordinary traffic, forbidden: 1. on belligerent territory and waters; 2. between their possessions; 3. between belligerent allies.

SECTION 7. The transportation of an enemy's troops, soldiers, or agents of war is forbidden: 1. in belligerent waters; 2. between their authorities, ports, possessions, armies, or fleets; 3. when the transportation is on account of or by order or mandate of an enemy, or to bring him either agents with a commission for war operations, or soldiers already in his service or auxiliary troops or those recruited in violation of neutrality,—between neutral ports, between those of a neutral and those of a belligerent, from a neutral point to the army or the fleet of a belligerent.

The prohibition shall not extend to the transportation of individuals who are not yet in the military service of a belligerent, even though they have the intention of entering it, or those who make the journey as simple travelers without evident connection with military service.

SECTION 8. The transportation of dispatches (official communications between official authorities) between two authorities of an enemy, who are on territory or a ship belonging to or occupied by him, except regular and ordinary traffic, is forbidden.

This prohibition shall not extend to transportation either between neutral ports, or emanating from or destined for some neutral territory or authority.

C.—General Provisions

SECTION 9. In the event of unjustifiable seizure or repression because of contraband or transportation, the captor's State shall be liable to damages and responsible for the restoration of the articles.

SECTION 10. Transportation under way before the declaration of war and without necessary knowledge of its imminence shall not be punishable.

RULES ON BOMBARDMENT OF OPEN TOWNS BY NAVAL FORCES¹

The question was put on the order of the day at the Cambridge session in 1894 on the motion of Mr. Holland, who was appointed reporter with General den Beer Poortugael.

At the session of Venice in 1896 Messrs. Holland and den Beer Poortugael made a report accompanied by proposals.²

The discussion in plenary session took place in the meeting of September 29, 1896,³ and resulted in the adoption on that date of the following resolutions:⁴

¹ *Annuaire*, vol. 20, p. 372.

² *Ibid.*, vol. 15, pp. 145, 150.

³ *Ibid.*, p. 309.

⁴ *Ibid.*, p. 313.

ARTICLE 1. There is no difference between the rules of the law of war regarding bombardment by military land forces and by naval forces.

ARTICLE 2. Consequently the general principles laid down in Article 32¹ of the *Manual of the Institute* are applicable to the latter; that is to say, that it is forbidden: (a) to destroy public or private property if this destruction is not demanded by an imperative necessity of war; (b) to attack and to bombard places that are not defended.

ARTICLE 3. The rules laid down in Articles 33 and 34 of the *Manual* are equally applicable to naval bombardments.

ARTICLE 4. In virtue of the general principles above, the bombardment by a naval force of an open town, that is to say, one which is not defended by fortifications or by other means of attack or of resistance for immediate defense, or by detached forts situated near by, for example, at a maximum distance of from four to ten kilometers, is inadmissible except in the following cases:

1. For the purpose of obtaining by requisitions or contributions what is necessary for the fleet.

These requisitions or contributions must not exceed the limits prescribed by Articles 56 and 58 of the *Manual of the Institute*.

2. For the purpose of destroying dockyards, military establishments, depots of war munitions, or war vessels in a port.

Further, an open town which defends itself against the entrance of troops or of marines that have been landed may be bombarded for the purpose of covering the disembarkation of the soldiers and the marines, if the open town attempts to prevent it, and, as an auxiliary measure of war, to facilitate the assault made by the troops and marines that have been landed, if the town defends itself.

Bombardments of which the object is only to exact a ransom are specially forbidden, and, *a fortiori*, those which are intended only to bring about the submission of the country

¹ *Ante*, p. 33.

by the destruction, without other reason, of the peaceful inhabitants or their property.

ARTICLE 5. An open town can not be exposed to a bombardment for the mere reason:

1. That it is the capital of a State or the seat of the Government (but naturally these circumstances do not guarantee it in any way against a bombardment).

2. That it is at the time occupied by troops, or that it is ordinarily the garrison of troops of different arms intended to join the army in time of war.

CONFLICT OF LAWS ON THE SUBJECTS OF NATIONALITY AND EXPATRIATION ¹

This question was put upon the order of the day by the Institute at the Hamburg session in 1891 on the motion of Mr. von Martitz. Messrs. Catellani and Weiss were appointed reporters. At the Paris session in 1894, Mr. Weiss made a preliminary report.² At the Cambridge session in 1895, Mr. Weiss presented a report and conclusions.³ In the plenary session of August 14, 1895, the Institute agreed upon several general principles.⁴

At the Venice session in 1896, a supplementary report and draft resolutions were offered by Messrs. Catellani and Weiss.⁵ The discussion in plenary session took place September 26 and 28, which resulted in the following resolutions adopted September 29:⁶

RESOLUTIONS ADOPTED BY THE INSTITUTE OF INTERNATIONAL LAW

The Institute of International Law recommends to the various governments, both in the making of domestic laws and in the conclusion of diplomatic conventions, the following principles:

ARTICLE 1. A legitimate child follows the nationality with which its father was clothed on the day of its birth, or on the day when the father died.

¹ *Annuaire*, vol. 20, p. 289.

² *Ibid.*, vol. 13, p. 162.

³ *Ibid.*, vol. 14, p. 66.

⁴ *Ibid.*, pp. 194 *et seq.*

⁵ *Ibid.*, vol. 15, p. 125.

⁶ *Ibid.*, pp. 233, 270.

ARTICLE 2. An illegitimate child which, during its minority, is acknowledged by its father only, or simultaneously by its father and its mother, or whose parentage is settled by the same judgment with regard to both, follows the nationality of its father on the day of its birth; if it has been acknowledged only by its mother, it takes the nationality of the latter, and retains it even when its father recognizes it later.

ARTICLE 3. A child born upon the territory of a State, of an alien father who was himself born there, is clothed with the nationality of that State provided that in the interval between the two births the family to which it belongs has had its principal abode there and unless the child has elected for the nationality of its father in the year of its majority as fixed by the national law of its father or by the law of the territory where it was born.

In cases of illegitimate births not followed by acknowledgment on the part of the respective parents, the preceding rule also applies by analogy.

It does not apply to the children of diplomatic agents or of consuls (*missi*) regularly accredited in the country where they are born; these children are deemed to be born in the country of their father.

ARTICLE 4. Unless the contrary has been expressly reserved at the time of naturalization, the change of nationality of the father of a family carries with it that of his wife, if not separated from her, and of his minor children, saving the right of the wife to recover her former nationality by a simple declaration, and saving also the right of option of the children for their former nationality, either in the year following their majority, or beginning with their emancipation, with the consent of their legal assistant.

ARTICLE 5. No one can be allowed to obtain naturalization in a foreign country unless he proves that his country of origin releases him from his allegiance, or at least that he has acquainted the government of his country of origin with

his wish, and that he has satisfied the military law for the period of active service provided by the laws of that country.

ARTICLE 6. No one can lose his nationality or renounce it unless he shows that he has fulfilled the conditions required to obtain his admission into another State. Denationalization can never be imposed as a penalty.

USE OF THE NATIONAL FLAG FOR MERCHANT SHIPS¹

At the meeting at Hamburg in 1891, the question, on the motion of Mr. Asser, was entered on the program in these words: "Would it be useful and possible to lay down uniform rules governing the conditions under which, in every country, merchant ships shall have the right to fly the national flag? If so, what should these rules be?" At the meeting at Venice in 1896, Mr. Asser and Lord Reay presented their report together with a draft of resolutions.² The discussion in plenary session took place September 30, 1896,³ and resulted in the adoption on that date of the following draft rules:⁴

SECTION I.—ACQUISITION OF THE RIGHT TO THE FLAG OF A STATE

ARTICLE 1. The ship should be inscribed on the register kept for this purpose by authorized officials, in conformity with the laws of the State.

ARTICLE 2. To be inscribed on this register, more than half the ship must be the property:

1. Of nationals; or
2. Of a company under a collective name or a *commandite*, of which more than half the members personally responsible are nationals; or
3. Of a national stock company (joint-stock or *commandite*), two-thirds at least of the directors of which are

¹ *Annuaire*, vol. 20, p. 320.

² *Ibid.*, vol. 15, pp. 51, 72.

³ *Ibid.*, p. 189.

⁴ *Ibid.*, p. 201.

nationals; the same rule applies to associations and other legal persons owning ships.

ARTICLE 3. The concern (whether an individual ship-owner, a company or corporation) must have its headquarters in the State whose flag the ship must fly and in which it must be registered.

ARTICLE 4. Each State shall determine the conditions to be fulfilled in order to be appointed captain or first officer of a merchant ship: but the nationality of the captain or that of the members of the crew shall not be a condition of acquiring or forfeiting the right to the national flag.

SECTION II.—FORFEITURE OF THE RIGHT TO THE FLAG OF A STATE

ARTICLE 5. Failure to comply with one of the conditions under which this right may be acquired does not entail forfeiture of this right until after the ship has been erased from the register. Such erasure is made at the request of the owners or of the management of the ship, or by the authority intrusted with the register, except as provided for by Articles 7 and 8 below.

ARTICLE 6. The owner or the management which shall have neglected to send the necessary notification to this authority shall be liable to a fine.

ARTICLE 7. If the change in ownership of a share in the ship causes the forfeiture of the right to the flag, the owners shall be granted a suitable length of time, in order to take the measures necessary for the ship to retain its former nationality, or to acquire another.

ARTICLE 8. If, after the expiration of this period, those interested have not taken the measures necessary to attain one of these two ends, the ship shall be erased from the register, and the person responsible for the loss of nationality or his heirs, if the loss of nationality is due to his death, shall be liable to a fine.

SECTION III.—TEMPORARY ACQUISITION OF THE RIGHT TO
THE FLAG

ARTICLE 9. Temporary acquisition of the right to a flag occurs in two cases:

1. When a ship, built abroad, cannot definitely acquire the right to a flag until after its arrival in one of the ports of the owner's State;

2. When a ship changes owners while in a foreign port.

ARTICLE 10. In each of these two cases, the consuls and consular agents residing in the country in which the ship is, shall be charged with the giving of a provisional certificate, if the essential conditions imposed by law for acquiring the nationality of the ship be fulfilled; this certificate shall be valid only during a period to be determined by law.

EMIGRATION FROM THE POINT OF VIEW OF
INTERNATIONAL LAW ¹

The question was entered upon the program at the meeting at Venice in 1896, on the motion of Mr. Olivi, who, with Mr. Heimburger, was appointed reporter. At the meeting at Copenhagen in 1897, Messrs. Olivi and Heimburger presented a report with a draft of regulations.² The discussion took place in plenary session the 27th of August and the 1st of September, 1897.³ It resulted in the adoption on the latter date of the following principles and *væu*:

I.—PRINCIPLES RECOMMENDED FOR A DRAFT CONVENTION ⁴

ARTICLE 1. The contracting States recognize liberty of emigration and immigration for individuals, singly or in numbers, without distinction of nationality.

This liberty cannot be restricted except by duly published decisions of governments and within the strict limits of the necessities of a social and political nature.

The said decisions shall be notified without delay through diplomatic channels to the States interested.

¹ *Annuaire*, vol. 20, p. 306.

² *Ibid.*, vol. 16, pp. 53, 58.

³ *Ibid.*, pp. 242 *et seq.*

⁴ *Ibid.*, p. 262.

ARTICLE 2. Emigration shall be forbidden to those whom the laws of the State of immigration forbid to immigrate.

ARTICLE 3. The contracting States from which there is considerable regular emigration shall organize a central bureau of emigration, from which shall proceed all measures for the regulation and control of emigration, and with which shall be connected an information service entrusted with publications relative to the interests of emigrants and freely accessible upon request to all those who intend to emigrate, without distinction of nationality.

ARTICLE 4. The governments agree to publish regularly all information concerning emigrants from the moral, hygienic, and economic points of view, taking care that they shall be fully informed of the situation before concluding the emigration contract.

They agree also to punish severely all dissemination of false reports concerning emigration.

ARTICLE 5. Each State shall forbid persons or societies authorized to act as emigration agencies to conclude contracts by which they engage to furnish a certain number of persons to any enterprise whatever or to a foreign government, unless a special authorization is given in each case.

ARTICLE 6. All persons authorized to act as emigration agents shall be jointly responsible to the authorities and to the emigrants, their successors and assigns, for all the acts of their administration and that of their officers or representatives, within the country as well as abroad.

ARTICLE 7. The emigration bureaus or the naval authorities of the port of departure shall in good time inform the consuls of the country of emigration stationed in the ports to which the ships are bound, of the fact that there are emigrants aboard, and at the same time furnish them with all necessary information.

ARTICLE 8. The contracting States engage to see to the protection of immigrants and to placing them through the bureaus of immigration.

ARTICLE 9. The governments may authorize the said bureaus, as well as those mentioned in Article 4, as established

in the various States, to communicate freely and directly with each other in all that concerns their respective affairs.

ARTICLE 10. All the contracting States shall endeavor to come to an understanding in order to insert in their penal codes the provisions necessary to ensure punishment for infraction of the rules in force concerning emigration.

II.—*Vœu* RELATIVE TO THE SUBJECT OF EMIGRATION ¹

Considering the extraordinary importance of emigration, which has greatly increased in our day, and in order the better to ensure complete and effective protection for the interests of emigrants and of immigrants from the moral, hygienic, and economic points of view, the Institute sets forth in the form of *vœux*, the following propositions, the adoption of which it recommends to the States:

1. That emigration be forbidden:

(a) To minors and lunatics, without the consent of those who exercise the authority of father or guardian over them;

(b) To persons unable to work on account of advanced age or illness, unless their support is sufficiently guaranteed at their place of destination;

(c) To persons afflicted with contagious diseases of a kind to endanger the health of their fellow passengers or the public health of the country to which they are going.

2. That no one be allowed to undertake the making of contracts with or the transporting of emigrants without the authority of the government in which these operations are to be carried on.

3. That the agents and representatives of emigration agencies may not obtain the said authority except under the following conditions:

(a) That they have attained their majority;

(b) That they are citizens of the State from which they request the authority;

(c) That they enjoy civil and political rights;

¹ *Annuaire*, vol. 16, p. 276.

(*d*) That they have a legal residence in the State from whose authorities the authorization is requested;

(*e*) That they are moral and enjoy a good reputation;

(*f*) That they have never been found guilty of crime or serious offense, nor of infraction of the regulations governing emigration.

4. That the granting of authorization be dependent, in every case, upon the previous deposit of security, the amount of which shall be determined by the States, in order to guarantee the claims that the authorities or the emigrants may bring according to the provisions of the law, as well as for the fines imposed for infractions under the laws and regulations in force.

5. That the said security be not restored to the interested parties until after a reasonable length of time.

6. That the States take severe measures and exercise strict surveillance to prevent, in any case, persons and societies authorized to act as emigration agents from urging the inhabitants of the country to emigrate, taking advantage of their ignorance and good faith to persuade them to make emigration contracts.

7. That under pain of nullification, the emigration contract be made in writing and subject to the control of local public authority designated by the law of each State.

8. That the price of transportation shall be always a sum of money to be paid in full before departure and may never be contracted in personal prestations, under penalty of nullification of any agreement to the contrary.

9. That the entire and immediate restoration of the price of transportation really paid be declared obligatory, when the emigrants shall be prevented from departing by reason of *force majeure* or important circumstances arising after the concluding of the contract, under penalty of nullification of any agreement to the contrary.

10. That the ships intended for the transportation of the emigrants be provided with suitable arrangements, making possible a complete and strict separation of the sexes, be

well ventilated, and provided with medical attendance on board.

11. That the emigrants, even in case of free transportation by sea, have the right always to wholesome food and lodging, sufficient and suitable, as well as to medical attention throughout the entire voyage and also in the event of its interruption for any cause whatever beyond their control.

12. That the emigration agencies or agents ensure, at their expense, before the departure of the emigrants and in their interest, the price of transportation and provisions, and all losses and all injuries resulting from the total or partial non-performance of the transportation contract.

13. That the States, by joint rules, provide for the rapid and economical settlement of disputes between emigrants and emigration agencies or agents and institute, if they think best, an arbitration commission which shall render a definitive judgment upon every claim, without prejudice to the right of the parties to bring their suit before the regular courts or before arbitrators voluntarily chosen by them.

14. That the States ensure full liberty of action to protective associations which, while not regarding emigration as a matter of speculation, shall assist the emigrants from charitable motives only.

PRIZES—HARMONIZING OF THE DRAFT REGULATIONS ON PRIZES OF 1887 WITH THE DRAFT REGULATIONS ON CONTRABAND OF WAR ADOPTED IN 1896¹

In consequence of the adoption of the regulations on contraband of war, various changes had to be made in the international regulations on prizes.² Messrs. Kleen and Brusa submitted to the Institute at its Copenhagen meeting in 1897 some proposals on this subject and they resulted in the adoption of the following amendments to be inserted in the international prize regulations.³

¹ *Annuaire*, vol. 20, p. 378.

² *Annuaire*, vol. 16, p. 311.

³ *Ante*, pp. 45, 71.

FIRST TEXT OF PRIZE
REGULATIONS ¹

NEW TEXTS ¹

ARTICLE 30. During the war objects capable of being immediately employed for war purposes and transported by neutral or enemy national merchant vessels for the account of or destined to the enemy (contraband of war) are subject to seizure. The belligerent governments shall determine in advance, in each war, the objects which they will consider contraband.

ARTICLE 30. During war, those objects, which, made expressly for war, of immediate and special use therein in their existing state, and transported by sea for the account of or destined to a belligerent, come under the category of contraband of war, are subject to seizure.

ARTICLE 34. In the same category as transportation of contraband of war (Article 30) is transportation of troops for military operations by the enemy on land and sea, as well as transportation of official correspondence of the enemy by neutral or enemy national merchant vessels.

ARTICLE 34. Illegal transportation of agents, soldiers and dispatches for a belligerent, hitherto in the same category as the carrying of contraband, shall be treated as prohibited transport service, according to the second part of the international regulations on contraband of war.

ARTICLE 113. In order that a vessel may be condemned because of being engaged in transportation prohibited in time of war, it is necessary:

1. That the transportation be to an enemy destination;

1. That the shipment of contraband be destined for a belligerent;

¹ *Annuaire*, vol. 16, p. 44. See *ante*, pp. 51, 52, 76.

2. That the object transported be itself prohibited, that is, contraband, or conditional contraband, of war;

3. That the contraband be seized in the very act of being transported, or that it be found on board a vessel when the latter is stopped.

2. That the forbidden transport service be for him;

3. That the object transported be itself prohibited;

4. That the ship be caught in the act.

ARTICLE 117. Official correspondence and contraband transported to an enemy destination shall be confiscated; troops in course of transportation to the enemy shall be made prisoners. The vessel transporting them shall not be condemned unless:

1. It offers resistance;

2. It transports enemy troops;

3. If the cargo in course of transportation to an enemy destination is composed principally of provisions for the war vessels or troops of the enemy.

ARTICLE 117. Contraband, as well as every *article* illegally transported, shall be confiscated, and the *persons* and *troops* illegally transported shall be made prisoners. The vessel transporting them shall not be condemned unless:

1. It offers resistance;

2. It transports illegally agents, soldiers or dispatches for a belligerent.

STATUS OF SHIPS AND THEIR CREWS IN FOREIGN PORTS IN TIME OF PEACE AND IN TIME OF WAR¹

At the meeting at Paris in 1894, Mr. Féraud-Giraud introduced the question and, with Mr. Lyon-Caen, was appointed reporter.

At the meeting in Venice in 1896, Mr. Féraud-Giraud, in collaboration with Mr. Kleen, made a report accompanied by a draft of regulations in

¹ *Ibid.*, vol. 20, p. 323.

fifty-one articles, including preliminary provisions, rules for a time of peace and rules for a state of war.¹ The question came up for discussion at the meeting in Copenhagen in 1897, and a text containing the preliminary provisions and the first part (state of peace) was adopted subject to revision.² At the meeting at The Hague in 1898, Messrs. Féraud-Giraud and Kleen, who had not been present at the meeting in Copenhagen, made further remarks to the Institute concerning the draft as a whole.³ The discussion took place in plenary session August 20, 22 and 23, 1898, and resulted in the adoption on the last-mentioned date of the following regulations:⁴

REGULATIONS CONCERNING THE LEGAL STATUS OF SHIPS AND THEIR CREWS IN FOREIGN PORTS⁵

PRELIMINARY PROVISIONS

ARTICLE 1. The provisions of the present regulations are applicable not only to ports, but also to inlets and inclosed or open roadsteads, to bays and harbors which can be assimilated to these inlets and roadsteads.

ARTICLE 2. The said ports, harbors, inlets, roadsteads and bays are not only under the right of sovereignty of the States whose territory they border, but are also part of the territory of these States.

ARTICLE 3. As a general rule, access to the ports and other portions of the sea specified in Article 1, is presumed to be free to foreign ships.

By exception, for reasons of which it is sole judge, a State may declare its ports or some of them closed—even when treaties guarantee, in a general way, free access,—when the safety of the State or the interest of the public health justifies the order.

Entrance to the ports may also be refused to a particular nation, as an act of just reprisal.

ARTICLE 4. Exclusively military ports or those where arsenals intended for the construction and armament of the naval forces of the country are located are to be considered as regularly closed and access to them rightfully forbidden to ships, without distinction of flag.

¹ *Annuaire*, vol. 15, p. 15.

⁴ *Ibid.*, p. 231.

² *Ibid.*, vol. 16, pp. 186, 231.

⁵ *Ibid.*, p. 273.

³ *Ibid.*, vol. 17, p. 36.

ARTICLE 5. The State as sovereign has the right:

To regulate the conditions of entrance and of sojourn to which those who frequent the part of the coast mentioned in Article 1 must conform;

To reserve to its nationals certain branches of commerce, industry or navigation;

To establish, under penal sanctions, regulations concerning navigation, order, safety, public health and police in its various departments;

To impose fiscal charges of various kinds, especially customs duties, and to enforce obedience to the measures necessary to ensure the collecting of such taxes.

ARTICLE 6. When necessity compels putting into port, entrance to a port may not be refused to a ship in distress, even when such port is closed in conformity with Article 3 or Article 4.

The ship seeking port shall conform strictly to the conditions which shall be imposed upon it by the local authority; but these conditions shall not be such as to prevent by their extreme severity the exercise of the right of putting into port when compelled by necessity.

The authorities of a country owe help and relief to foreign vessels shipwrecked on their coasts; they must ensure respect for private property, send word to the consulate of the shipwrecked, and assist the agents of this consulate in what they do when they intervene.

It is to be hoped that States will require reimbursement only for necessary expenses.

ARTICLE 7. The status established by the principles recognized by public international law differs essentially according to whether it is applied to war-ships or to merchant ships, in peace or in war.

PART I.—IN PEACE

Section I.—The Navy

ARTICLE 8. Considered as war-ships, and as such subject to this regulation, are all ships under the command of

an officer in active service in the navy of the State, manned by a naval crew, and authorized to carry the ensign and the pennant of the navy.

The build of the ship, the purpose for which it was formerly used, the number of individuals which compose its crew cannot change this character.

Assimilated to war-ships are foreign ships which are expressly at the service of the heads of the State or their official representatives. The small boats which belong to these ships have the same status.

ARTICLE 9. In cases where privateering may be legally carried on, those privateers shall also be assimilated to war-ships, which during the war shall be bearers of commissions regularly conferred by the belligerent State upon the nationality to which they belong.

ARTICLE 10. Unless there are treaties, laws, regulations or special prohibitions to the contrary, ports are open to foreign war-ships, on condition of their strict observance, both upon entrance and during their stay, of the conditions upon which they are admitted.

ARTICLE 11. The commander of a foreign war-ship who intends to anchor in a roadstead or in a port, shall ask permission to do so from the local authorities, telling his reasons, and shall not enter until after he has received an answer in the affirmative.

Good reasons, of which the authority of the country is the sovereign judge, may prompt a refusal of admission or a request to depart.

ARTICLE 12. A foreign war-ship which enters a port, shall conform to the formalities sanctioned by custom in default of a treaty.

ARTICLE 13. Foreign war-ships admitted to ports must respect local laws and regulations, especially those concerning navigation, anchorage and public health.

In case of serious and continued infraction, the commanding officer, if courteous official warning has had no effect, may be requested and, if necessary, compelled to put to sea.

The same regulation shall apply if the local authorities consider that the presence of his ship is a cause of disorder or of danger to the safety of the State.

But, except in cases of extreme necessity, these severe measures shall not be adopted except upon order of the central government of the country.

ARTICLE 14. With regard to customs duties, as a general rule, all foreign war-ships shall be exempt from inspection on board by customs officers; the latter shall merely keep the vessels under observation.

ARTICLE 15. War-ships in a foreign port shall remain subject to the Power to which they belong, the local government having no right to exercise authority or jurisdiction over those on board, nor to interfere in what happens on board, except in the case provided for in Article 16.

Necessary official relations between the commanders and officers on board these ships and the authorities on land are carried on through administrative and, if necessary, through diplomatic channels.

ARTICLE 16. Crimes and offenses committed on board these ships or on the boats belonging to them, whether by members of the crew, or by any others on board, shall come under the jurisdiction of the courts of the nation to which the ship belongs and shall be judged according to the laws of that nation, whatever be the nationality of the perpetrators or the victims.

Whenever the commander shall deliver the delinquent over to the local authorities, the latter shall regain the jurisdiction which under ordinary circumstances would belong to them.

ARTICLE 17. When disorders shall occur on board a ship and the commander, powerless to quell them, shall request the coöperation of the local authority to help him, if the latter shall grant it, he shall immediately advise the central authority, who shall communicate this information to the local representative of the government to which the ship belongs and together they shall agree upon the measures to be taken.

If order outside the ship shall be endangered, the local authority shall take the necessary measures within his waters to remedy the situation, provided that he give notice as stipulated above, and under the conditions there indicated.

In case of extreme necessity, the local authority shall himself attend to the matter.

ARTICLE 18. If people from on board shall commit violations of the law of the country on land, they may be arrested by officers of the authority of the country and given up to local justice.

Notice of the arrest shall be sent to the commander of the ship, who cannot require them to be given up.

If the delinquents, not having been arrested, shall return on board, the local authority cannot take them thence, but may require only that they be handed over to their national courts and that it be informed of the result of the proceedings.

If the persons accused of misdemeanor or crime committed on land are on duty, whether individually or collectively, in virtue of a concession, express or tacit, of the local authority, they shall, after their arrest, upon the request of the commander, be delivered over to him with the *procès-verbaux* stating the facts, and with the request, if necessary, that they be brought before their competent national authority, and that the local authority be informed of the result of the proceedings.

ARTICLE 19. The commander shall not grant asylum to persons prosecuted or condemned for misdemeanors or crimes under common law, nor to deserters belonging to the army or navy of the country or to another ship.

If he shall receive political refugees on board, it must be clearly established that they are such, and he must admit them under such conditions that the act does not constitute on his part assistance given to one of the parties in dispute to the prejudice of the other.

He may not land these refugees in another part of the country from which he has taken them on board, nor so near to that country that they may easily return thither.

ARTICLE 20. Persons who shall take refuge on board,

unknown to the commander, may be delivered up or forced to leave.

ARTICLE 21. Whatever shall be the status of persons on board a war-ship, even when they have been wrongly received, if the commander refuses to give them up, force may not be resorted to to ensure their recapture, or visit and search exercised to that end.

The same rule shall apply to the recovery of goods on board which are the subject of claims.

In the cases provided for by this article, the local authority which wishes to secure extradition of persons or return of goods, must apply to the central authority of the State, in order that the necessary diplomatic steps to this end may be taken.

ARTICLE 22. Deserters from the ship arrested on land shall be returned to the authority on board.

If the ship shall have left, they shall be put at the disposition of the representatives of that authority and held at the expense of the State in whose service they are, for a period of two months at most, at the expiration of which time the man shall be set at liberty and may not be rearrested for the same offense.

The refusal of the local authority to put deserting sailors under arrest, at the request of the officers on board, may be cause for just diplomatic claims, but in no such case are these officers authorized to act directly toward this end through men of their crew or, at their direct request, through local officers.

ARTICLE 23. Obligations personally contracted as private individuals by men on board toward persons not members of the crew are binding upon them as upon all other foreigners; disputes which may arise on this subject are cognizable in the competent courts, and subject to the laws applicable according to the rules of common law, but those regularly carried on the muster-roll are not subject to personal restraint, such as arrest, which would remove them from service on board.

ARTICLE 24. Ships set apart by the State exclusively for

the postal service, can claim only those privileges which are accorded them by conventions and custom.

Section II.—Merchant Marine

ARTICLE 25. Foreign merchant ships in a port shall be under the protection of the authority of the country. They shall be subject, as a general rule and except for the formal derogations sanctioned by the following articles, to the police and inspection regulations and to all the regulations in force in the port in which they are received.

ARTICLE 26. They shall pay the duties, tolls, dues and taxes lawfully claimed, submitting to the law of the land for assuring their collection, without its being necessary in the regular and normal carrying out of these formalities, for the local agents to have recourse to the intervention of consuls or other agents of the nation to which the ship belongs.

The captain, in carrying out the formalities which he is bound to fulfil, shall have the assistance of the commissioned agents in countries in which by law such agents exclusively exercise this right.

ARTICLE 27. Consuls, vice consuls and consular agents may go themselves or send representatives on board the ships of their nation, after they have been admitted to pratique, to question the captain and the crew, examine the ship's papers, receive declarations of their voyage, their destination, and the incidents of the crossing, draw up manifests, and facilitate the dispatch of the ship; finally, to accompany the men on board to the courts and administration offices of the country, to act as interpreters and agents in the business which they have to transact, or the requests which they have to make; except in cases provided for by the commercial laws of the country in which they are, to the stipulations of which they are bound strictly to submit, nor is the present provision to be considered as in the least in derogation thereof.

ARTICLE 28. The rules to which foreign ships in an open

port are subject, shall be the same in principle, barring the exceptions which may result from treaties, for all ships without distinction of nationality.

ARTICLE 29. Ships of every nationality, by the mere fact that they are in a port or in a portion of the sea under the same rule, shall be subject to the jurisdiction of the country, and there is no distinction between acts committed on board and those committed on land.

Misdemeanors committed on a merchant ship at sea shall not come under the cognizance of the authority of the port at which they land; but, in case of the flight of a ship to protect persons on board from actions against them because of acts committed in a port, it may be pursued on the high seas as provided in Article 8, section 2, of the rules adopted by the Institute governing territorial waters.

ARTICLE 30. Acts committed on board ships in a port, which are mere infractions of discipline and the professional duties of a sailor are excepted and come only under the national jurisdiction of the vessel. The local authority shall refrain from interfering, unless his coöperation shall be regularly requested, or unless the act shall be such as to endanger the peace of the port. Even in this last case, local courts may take cognizance only if the act, besides being an infraction of discipline, is at the same time a misdemeanor under the common law.

ARTICLE 31. When proceedings shall be directed against a man on board by the authority of the country, notice of it shall immediately be given to the consular authority of the foreign country in whose district the ship is.

When the local authority is competent, it may undertake on board the ship investigations, verifications, and examinations, and make arrests, in conformity with the provisions of its law.

If an agent of the nation to which the ship belongs is in the neighborhood, he shall be notified in advance of the visit which is to take place on board, and of the hour when it is to occur, and he shall be invited to take part, if he thinks it advisable, personally or through a representative provided

with the proof of his authority; but his absence shall not in any way whatever prevent judicial proceedings.

ARTICLE 32. All disputes between members of the crew, or between them and their captain, or between captains of different vessels, of one nation in the same port, over the hiring of seamen or like questions, shall be settled without the interference of the local authorities.

In applying this rule, persons engaged in the fitting-out of the vessel and carried on the muster-roll, whatever their true nationality, are assimilated to persons belonging to the nationality of the ship.

ARTICLE 33. Disputes of a civil nature between persons not on board the ship and captains or members of the crew, are judged according to the common-law rules of competence, and are not reserved exclusively for the authorities of the ship's nationality.

Disputes which may arise concerning the settlement of disbursements and charges in a port against a foreign ship which has entered it, whether voluntarily or through necessity, are under the jurisdiction of the territorial judge and shall be adjusted by application of the provisions of the law that he administers.

Competence with regard to actions arising out of the collision of two foreign ships shall be governed by the Resolutions adopted by the Institute on disputes arising out of collisions at sea.

ARTICLE 34. Captains of merchant ships in a foreign port shall not take on board any individual, even if he is one of their nationals, who shall seek refuge on such ships to escape from the consequences of violating the laws to which he was subject through residence.

If a person, on board under these conditions, is claimed by the territorial authority, he shall be given up to this authority; in default of which, this authority has the right, after having previously notified the consul, to proceed through its agents to the arrest of such person on the ship.

ARTICLE 35. With regard to deserters from merchant ships, the provisions of Article 22 shall be conformed with.

Deserters belonging to the nationality of the country where the ship is shall, however, not be given up to the authorities on board by the local authorities.

ARTICLE 36. Foreign ships anchored in a port are subject to arrest and seizure as the result of a court decision in the matter of a commercial transaction or of debt, according to the law of the land.

It is, however, to be hoped that the law will forbid the seizure of a foreign ship anchored in a port, when it is ready to sail, unless for debts contracted for the voyage about to be made; and even in this case, security for the debts shall permit its release.

The officers of the court and those entrusted with the execution of decisions shall be authorized to serve all notices and to carry out all executions on foreign ships, in conformity with the laws of procedure applicable to national ships, without being obliged to have recourse to the intervention of the consuls or commercial agents, even when present, of the nation to which the ship belongs.

ARTICLE 37. Public officials, registrars of births, deaths and marriages, notaries and others, requested to perform acts in connection with their duties or offices, on board foreign vessels at anchor in port must comply; and their acts, accepted in the form and under the conditions prescribed by local law, shall have the same effect and the same force as if they had been performed by the public officials on land within their territorial district.

PART II.—COERCIVE MEASURES AND A STATE OF WAR

ARTICLE 38. An embargo put upon foreign ships anchored in a port can not be justified except as a measure of retorsion or reprisal.

It may not be exercised except directly in the name of the State and by its officers.

As far as possible, the reasons which have prompted it and its probable duration shall be made known to those who are the subject of the measure.

The embargo shall be raised as soon as the satisfaction asked for has been accorded. In default of satisfaction, the ship on which the embargo rests may be sold, and the proceeds of the sale shall go to the State that imposed the embargo.

ARTICLE 39. The right of angary shall be abolished, both in time of peace and in time of war, where neutral ships are concerned.

ARTICLE 40. War-ships which, at the beginning of hostilities or at the time of the declaration of war, shall be in an enemy port, shall not be subject to seizure, during a period to be fixed by the authorities. During this period, they may discharge their cargo and take on another.

ARTICLE 41. Merchant ships compelled by *force majeure* to take refuge in an enemy port, may not be captured therein. They shall be required, during their stay, to conform exactly to the stipulations of the local authority, and to put to sea again within the period that shall be indicated to them.

If a war-ship shall have been thus compelled to seek refuge in an enemy port, it may be courteously received and provided with the means to put to sea again; if not, it shall be regularly captured.

ARTICLE 42. Granting of asylum to belligerents in neutral ports, although depending upon the pleasure of the sovereign State and not required of it, shall be presumed, unless previous notification to the contrary has been given.

With regard to war-ships, however, it shall be limited to cases of real distress, in consequence of: 1. defeat, sickness, or insufficient crew; 2. perils of the sea; 3. lack of the means of subsistence or locomotion (water, coal, provisions); 4. need of repairs.

A belligerent ship taking refuge in a neutral port from pursuit by the enemy, or after having been defeated by him, or because it has not a sufficient crew to remain at sea, shall remain therein until the end of the war. The same rule shall apply if it is carrying sick or wounded, and after having landed them, is in condition to go into action. The sick and wounded, though received and cared for, shall, after they

have recovered, be also interned, unless considered unfit for military service.

Refuge from the perils of the sea shall be granted to war-ships of belligerents only so long as the danger lasts. No greater quantity of water, coal, food or other analogous supplies shall be furnished them than is necessary to enable them to reach their nearest national port. Repairs shall not be allowed except so far as necessary to enable them to put to sea. Immediately thereafter the ship shall leave the port and neutral waters.

If two enemy ships shall be ready to leave a neutral port simultaneously, the local authorities shall set a sufficient interval, twenty-four hours at least, between their sailings. The right of leaving first shall belong to the ship which entered first, or, if it does not want to use this right, to the other, on condition that the latter requests it of the local authorities, which shall give the permission if the adversary, duly advised, shall insist upon remaining. If, upon the departure of a belligerent ship, one or more enemy ships are signaled, the departing ship shall be warned and may be readmitted to the port, there to await the entrance or the disappearance of the others. To engage an enemy ship within the port or in neutral waters is forbidden.

Belligerent ships in a neutral port shall keep the peace, obey the orders of the authorities, refrain from all hostilities, shall not take on reinforcements or recruit their military forces, shall refrain from all espionage and shall not use the port as a base of operations.

The neutral authorities shall see that the provisions of this article are respected, using force if necessary.

The neutral State may require an indemnity from the belligerent whose lawfully interned forces, or whose sick and wounded, it has supported, or whose ships have, either inadvertently or by violation of the order of the port, caused expense or damage.

ARTICLE 43. An attack, begun on the high seas and pursued in a neutral port or roadstead where a ship has taken refuge, is a violation of neutral territory. It must be checked

by the territorial power, by the use of force if necessary, and may be grounds for an indemnity.

ARTICLE 44. In regard to belligerents bringing a prize into a neutral port, the Institute refers to the rules laid down in its Regulations for naval prizes.

ARTICLE 45. Freedom of commerce is ensured to neutrals. Belligerents may not, as such, forbid or prevent their entering ports, either of neutral nations, or of belligerents, with the exception of those ports regularly blockaded.

Consequently, neutrals may leave an enemy port to go to a neutral port or to another enemy port. They are free to carry into belligerent ports all goods not comprised in the list of articles considered contraband of war.

ARTICLE 46. Neutral ships admitted into belligerent ports shall submit to all visits necessary to ascertain the character of the personnel and the nature of the goods on board, and to all measures taken in the interest of the safety of the State to which the port belongs. In case of resistance, the execution of these measures may, if necessary, be secured by the use of force.

APPLICATION OF THE PRINCIPLES OF THE GENEVA CONVENTION TO NAVAL WAR- FARE ¹

The question was introduced at the meeting at Copenhagen in 1897 by Messrs. Renault and Westlake, who agreed to make a report upon the subject. At the Neuchâtel meeting in 1900, the reporters, after having stated the fact of the adhesion of twenty-six Powers to the Convention signed at The Hague, July 26, 1899, expressed regret that the contingency contemplated by Article 10 of the Convention had not been provided for, on account of reservations made by certain of the Powers.² After the discussion, which took place September 7, 1900,³ the Institute adopted the following resolution:⁴

The Institute utters a *vœu* in favor of concluding a complementary convention containing the provision of Article 10 of the Hague Convention.

¹ *Annuaire*, vol. 20, p. 363.

² *Ibid.*, p. 229.

³ *Ibid.*, vol. 18, p. 46.

⁴ *Ibid.*, p. 231; vol. 20, p. 363.

RIGHTS AND DUTIES OF FOREIGN POWERS AS REGARDS THE ESTABLISHED AND RECOGNIZED GOVERNMENTS IN CASE OF INSURRECTION ¹

The question was entered on the program at the meeting at Venice in 1897, on the motion of Mr. Desjardins and Marquis de Olivart, who accepted the office of reporters. At the meeting at The Hague in 1898, Mr. Desjardins, in collaboration with the Marquis de Olivart, offered a report and a draft of regulations in eleven articles.² At the meeting at Neuchâtel in 1900, the discussion in plenary session took place on the 7th and 8th of September,³ and resulted in the adoption on the latter date of the following conclusions:⁴

ARTICLE 1. International law imposes upon third Powers, in case of insurrection or civil war, certain obligations towards established and recognized governments, which are struggling with an insurrection.

CHAPTER I.—DUTIES OF FOREIGN POWERS TOWARD THE GOVERNMENT WHICH IS FIGHTING THE INSURRECTION

ARTICLE 2. SECTION 1. Every third Power, at peace with an independent nation, is bound not to interfere with the measures which this nation takes for the reëstablishing of internal peace.

SECTION 2. It is bound not to furnish to the insurgents either arms, munitions, military goods, or financial aid.

SECTION 3. It is especially forbidden for any third Power to allow a hostile military expedition against an established and recognized government to be organized within its domain.

ARTICLE 3. One may not, in principle, consider it a grievance against the State within whose territory an insurrection has broken out, that in its armed defense against this insurrection, it applies the same repressive measures to all those who take an active part in the civil war, whatever be their nationality. Unusually cruel punishments are excepted

¹ *Ibid.*, vol. 20, p. 316.

² *Ibid.*, vol. 17, p. 71.

³ *Ibid.*, vol. 18, p. 181.

⁴ *Ibid.*, p. 227.

and those punishments which evidently exceed the bounds of necessity.

CHAPTER II.—ON THE RECOGNITION OF INSURGENTS AS BELLIGERENTS

ARTICLE 4. SECTION 1. The government of a country where a civil war has broken out may recognize the insurgents as belligerents either explicitly by a categorical declaration, or implicitly by a series of acts which leaves no doubt as to its intentions.

SECTION 2. The simple fact of applying, for humanitarian reasons, certain laws of war to the insurgents, does not in itself constitute a recognition of a state of belligerency.

SECTION 3. A government which has recognized its revolting nationals either explicitly or implicitly as belligerents, becomes powerless to criticise the recognition accorded by a third Power.

ARTICLE 5. SECTION 1. A third Power is not bound to recognize insurgents as belligerents merely because they are recognized as such by the government of the country in which a civil war has broken out.

SECTION 2. As long as it has not itself recognized the belligerency, it is not required to respect blockades established by the insurgents along those portions of the seacoast occupied by the regular government.

ARTICLE 6. A government which has recognized its revolting nationals as belligerents cannot consider it a cause of complaint against a third Power that it receives those armed insurgents who take refuge on its territory kindly, disarming them and interning them until the end of hostilities.

Consequently, it is powerless to object if its own soldiers, refugees in the same territory, are disarmed and interned. It is, moreover, liable to indemnity only for the support of its own troops.

ARTICLE 7. If the belligerency is recognized by third Powers, such recognition entails all the usual consequences of neutrality.

ARTICLE 8. Third Powers cannot recognize the character of belligerent in a revolutionary party:

SECTION 1. If it has not acquired a distinct territorial existence through the possession of a definite portion of the national territory;

SECTION 2. If it has not the elements of a regular government exercising in fact the manifest rights of sovereignty over this portion of the territory;

SECTION 3. If the fight is not carried on in its name by organized troops, subject to military discipline and conforming to the laws and customs of war.

ARTICLE 9. A third Power may, after having recognized the insurgents as belligerents, withdraw such recognition even when the situation of the parties in the struggle has not been changed. Such retraction has, however, no retroactive effect.

REGULATIONS RESPECTING THE RESPONSIBILITY OF STATES BY REASON OF DAMAGES SUFFERED BY ALIENS IN CASE OF RIOT, INSURRECTION OR CIVIL WAR¹

The question was placed on the program at the Hamburg session of 1891. Messrs. Jellinek and Brusa were appointed reporters. At the session at The Hague in 1898 Mr. Brusa communicated to the Institute his report with draft resolutions.² At the session of Neuchâtel in 1900 new theses were presented by Messrs. Brusa and von Bar.³ The discussion took place September 10, 1900,⁴ and resulted in the following resolutions:⁵

1. Independently of the cases in which indemnities may be due to aliens by virtue of the general laws of the country, aliens have a right to compensation when they are injured in their person or their property in the course of a riot, of an insurrection, or of a civil war:

(a) When the act from which they have suffered is

¹ *Annuaire*, vol. 20, p. 312.

² *Ibid.*, vol. 18, p. 47.

³ *Ibid.*, p. 254.

⁴ *Ibid.*, vol. 17, p. 96.

⁵ *Ibid.*, p. 233.

directed against aliens as such in general, or against them as *ressortissants* of a particular State, or

(b) When the act from which they have suffered consists in closing a port without previous and timely notification, or in detaining foreign ships in a port, or

(c) When the injury is the result of an illegal act committed by a government agent, or

(d) When the obligation to compensate is well founded on the general principles of the law of war.

2. The obligation is equally well founded when the injury has been committed (No. 1, *a* and *d*) on the territory of an insurrectionary government, either by this government itself, or by one of its functionaries.

On the other hand, certain demands for indemnity may be set aside when they rest on acts occurring after the government of the State to which the injured person belongs has recognized the insurrectionary government as a belligerent Power, and when the injured person has continued to keep his domicile or his habitation on the territory of the insurrectionary government.

As long as the latter is considered as a belligerent Power by the government of the person alleged to be injured, the demands may only be addressed, in the case of paragraph 1 of Article 2, to the insurrectionary government and not to the legitimate government.

3. The obligation to compensate disappears when the injured persons themselves have caused the event which has brought on the injury. Notably no obligation exists to indemnify those who have returned to the country in contravention of a decree of expulsion, nor those who betake themselves to a country or seek to engage in commerce or industry there, when they know, or ought to know, that troubles have broken out there, nor those who establish themselves or sojourn in a country which offers no security on account of the presence of savage tribes, unless the government of the country has given express assurances to the immigrants.

4. The government of a federal State composed of a cer-

tain number of small States, which it represents from an international point of view, may not plead, in order to avoid the responsibility resting upon it, the fact that the constitution of the federal State does not give it the right to control the member States, nor the right to exact from them the discharge of their obligations.

5. The stipulations mutually exempting States from the duty of giving their diplomatic protection ought not to cover the cases of denial of justice or of evident violation of justice or international law.

*VŒUX*¹

1. The Institute of International Law expresses the *vœu* that States avoid inserting in treaties clauses of reciprocal absence of responsibility. It believes that these clauses are wrong in excusing States from accomplishing their duty of protection of their nationals abroad and their duty of protection of aliens in their territory. It believes that States which, in consequence of extraordinary circumstances, do not feel themselves in a position to ensure in a sufficiently efficacious manner the protection of aliens on their territory can only withdraw themselves from the consequences of this state of things by temporarily forbidding aliens access to that territory.

2. Recourse to international commissions of inquiry and to international tribunals is in general recommended for all differences that may arise from injuries suffered by aliens during a riot, an insurrection, or a civil war.

SUBMARINE CABLES IN TIME OF WAR²

In 1902 Mr. von Bar proposed to the Institute new theses concerning submarine cables in time of war.³ They were accompanied by a report made by the author of these theses. Mr. Louis Renault, co-reporter, in his turn stated his opinion on the proposals of Mr. von Bar.⁴ New theses

¹ *Annuaire*, vol. 18, p. 253.

⁴ *Ibid.*, p. 18.

² *Ibid.*, vol. 20, p. 346. See also *ante*, p. 24.

³ *Annuaire*, vol. 19, pp. 12 *et seq.*

were likewise proposed by Messrs. Holland and Perels and some remarks were made by General den Beer Poortugael.¹ The discussion took place in plenary session September 22 and 23, 1902.² The Institute adopted the following rules:³

1. A submarine cable connecting two neutral territories is inviolable.

2. A cable connecting the territories of two belligerents or two parts of the territory of one of the belligerents may be cut anywhere except in the territorial sea and in the neutralized waters appertaining to a neutral territory ("neutralized" by treaty or by declaration in accordance with Article 4 of the Paris resolutions of 1894).⁴

3. A cable connecting a neutral territory with the territory of one of the belligerents can in no case be cut in the territorial sea or in the neutralized waters appertaining to a neutral territory.

On the high sea such a cable can only be cut if there is an effective blockade and within the limits of the line of blockade, subject to the repair of the cable within the briefest possible time. Such a cable can always be cut in the territory and in the territorial sea appertaining to enemy territory up to the distance of three marine miles from low-water mark.

4. It is understood that the liberty of the neutral State to transmit dispatches does not imply the right to make use or permit use thereof manifestly for the purpose of lending assistance to one of the belligerents.

5. In applying the preceding rules, no difference is to be made between State cables and cables owned by individuals, nor between cables which are enemy property and those which are neutral property.

¹ *Annuaire*, vol. 19, pp. 301 *et seq.*

² *Ibid.*, pp. 305 *et seq.*

³ *Ibid.*, p. 331.

⁴ *Ante*, p. 114.

INTERNATIONAL TRIBUNALS—THE HAGUE COURT OF ARBITRATION¹

CONCERNING THE CONSTITUTION OF ONE OR MORE INTERNATIONAL TRIBUNALS CHARGED WITH INTERPRETING THE CONVENTIONS OF INTERNATIONAL UNIONS

The question was raised before the Institute in the meeting at Cambridge in 1895, on the occasion of the general plan of revision of the Convention of Berne of September 9, 1886, relative to the protection of literary and artistic works.² At the meeting in Copenhagen in 1897, Messrs. Roguin and Darras presented a report accompanied by proposals.³ At the meeting at Brussels in 1902, Mr. de Seigneux formulated a new project contemplating the creation of international tribunals for each of the international unions.⁴ After a short discussion, the question was postponed until the next meeting.⁵ At the meeting in Edinburgh in 1904, the discussion was resumed and resulted in the adoption of the following resolution proposed by Mr. Harburger:⁶

The Institute of International Law holds that in case of divergent interpretations of international conventions the governments should have recourse to the intervention of the Permanent Court of Arbitration at The Hague.

OPENING OF HOSTILITIES

The subject of declarations of war was placed on the order of the day by the Council in 1904.⁷ At the Edinburgh session in that year Mr. Albéric Rolin made a preliminary report.⁸ After further study in committee, in which the reporter had the assistance of Messrs. Renault, Holland, Kleen, Mérignhac, Dupuis, and Strisower,⁹ Mr. Rolin made his final report¹⁰ in 1906 with draft resolutions.¹¹ The Institute considered this report in the plenary session of September 19 and 20, 1906,¹² and after a thorough discussion adopted the following resolutions and *vœu*:¹³

¹ *Annuaire*, vol. 20, p. 370.

² *Ibid.*, vol. 14, p. 285.

³ *Ibid.*, vol. 16, p. 106.

⁴ *Ibid.*, vol. 19, p. 332.

⁵ *Ibid.*, p. 334.

⁶ *Ibid.*, vol. 20, p. 210.

⁷ *Ibid.*, p. 233.

⁸ *Ibid.*, p. 64.

⁹ *Ibid.*, vol. 21, p. 29.

¹⁰ *Ibid.*, p. 27.

¹¹ *Ibid.*, p. 54.

¹² *Ibid.*, p. 269.

¹³ *Ibid.*, pp. 292, 293.

RESOLUTIONS

1. It is in accordance with the requirements of international law, and with the spirit of fairness which nations owe to one another in their mutual relations, as well as in the common interest of all States, that hostilities must not commence without previous and explicit warning.

2. This warning may take place either under the form of a declaration of war pure and simple, or under that of an ultimatum, duly notified to the adversary by the State about to commence war.

3. Hostilities shall not commence before the expiration of a delay sufficient to make it certain that the rule of previous and explicit notice cannot be considered as evaded.

Vœu

The Institute of International Law utters the *vœu* that the States be actuated by the preceding principles in their conduct and for the conclusion of international conventions.

INTERNATIONAL REGULATION OF WIRELESS TELEGRAPHY

This subject was added by the Council¹ to that of the legal status of air-ships upon which Messrs. Fauchille and Nys, as reporters, had presented reports, the two subjects having the same fundamental difficulty, that of the nature of the air and the rights of States to the atmosphere. Accordingly, Mr. Fauchille presented to the Institute, at the request of the Council, draft regulations and a report on the status of wireless telegraphy² at its Ghent session in 1906. The Institute considered the draft in the meetings of September 22 and 24,³ and adopted the following text:

PRELIMINARY PROVISIONS⁴

ARTICLE 1. The air is free. States have over it, in time of peace and in time of war, only the rights necessary for their preservation.

¹ *Annuaire*, vol. 21, p. 217.

² *Ibid.*, p. 76.

³ *Ibid.*, pp. 293 *et seq.*

⁴ *Ibid.*, p. 327.

ARTICLE 2. In the absence of special provisions, the rules applicable to ordinary telegraphic correspondence are applicable to wireless telegraphic correspondence.

PART I.—TIME OF PEACE

ARTICLE 3. Each State has the right, in the measure necessary to its security, to prevent, above its territory and its territorial waters, and as high as need be, the passage of Hertzian waves whether they issue from a government apparatus or from a private apparatus situated on land, on a vessel, or on a balloon.

ARTICLE 4. In case of prohibition of correspondence by wireless telegraphy, the government must immediately notify the other governments of the prohibition which it decrees.

PART II.—TIME OF WAR

ARTICLE 5. The rules accepted for time of peace are, in principle, applicable to time of war.

ARTICLE 6. On the high sea, in the zone corresponding to the sphere of action of their military operations, belligerents may prevent the emission of waves even by a neutral subject.

ARTICLE 7. Individuals are not considered as war spies, but should be treated as prisoners of war if captured when, in spite of the prohibition of the belligerent, they transmit or receive wireless dispatches between the different parts of an army or of a belligerent territory. The contrary should be the case if the correspondence is had under false pretenses.

The bearers of dispatches sent by wireless telegraphy are assimilated to spies when they employ dissimulation or ruse.

Neutral vessels and balloons which, through their communication with the enemy, can be considered as placed at its service may be confiscated as well as their dispatches and apparatus. Neutral subjects, vessels, and balloons, if

it is not established that their correspondence was intended to furnish the adversary with information relating to the conduct of hostilities, may be removed from the zone of operations and their apparatus seized and sequestered.

ARTICLE 8. A neutral State is not obliged to oppose the passage above its territory of Hertzian waves destined for a country at war.

ARTICLE 9. A neutral State has the right and the duty to close or take under its administration an establishment of a belligerent State which it had authorized to operate upon its territory.

ARTICLE 10. Every prohibition of communicating by wireless telegraphy formulated by belligerents should be immediately brought by them to the notice of the neutral governments.

SUBMARINE MINES

The question of the international regulation of the use of automatic torpedoes in the open sea was placed on the order of the day in the Edinburgh session, 1904, at the instance of Mr. Kebedgy, who was appointed reporter.¹

It was later modified by the Bureau of the Institute² to read "International regulation of the use of submarine mines and automatic torpedoes." Mr. Kebedgy, who was assisted by Messrs. Brusa, Dupuis, Engelhardt, Kaufmann, Politis and Albéric Rolin, made his report,³ accompanied by proposals to the Ghent session in 1906. The Institute discussed the subject in plenary session September 25, 1906,⁴ and tentative resolutions⁵ were adopted to be discussed at a subsequent session. In 1908 Mr. Edouard Rolin, who had been associated with Mr. Kebedgy as reporter, filed an amended project,⁶ which had been harmonized with the deliberations of the Second Hague Peace Conference. This project, after being discussed by the Institute in the sessions of September 29 and 30, 1908,⁷ was recommitted, conformably to the wishes of its author. At Paris in 1910 the Institute had before it a further report⁸ by Mr. Rolin, which it discussed in the meetings of March 31, April 1 and April 2,⁹ with the result that the first five articles below were adopted. The re-

¹ *Annuaire*, vol. 20, p. 233.

⁴ *Ibid.*, p. 330.

⁷ *Ibid.*, vol. 22, p. 222.

² *Ibid.*, vol. 21, p. 88.

⁵ *Ibid.*, p. 344.

⁸ *Ibid.*, vol. 23, p. 177.

³ *Ibid.*, pp. 88, 99.

⁶ *Ibid.*, vol. 22, p. 156.

⁹ *Ibid.*, p. 429.

maining articles were adopted, after discussion, in the following meeting at Madrid in the session of April 17, 1911.¹

ARTICLE 1. It is forbidden to place anchored or unanchored automatic contact mines in the open sea, the question of mines under electric control being reserved.

ARTICLE 2. Belligerents may lay mines in their own and in the enemy's territorial waters.

But it is forbidden even in these territorial waters: (1) to lay unanchored automatic contact mines unless they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them; (2) to lay anchored contact mines which do not become harmless as soon as they have broken loose from their moorings.

ARTICLE 3. It is forbidden to make use, either in territorial waters or on the high sea, of torpedoes which do not become harmless when they have missed their mark.

ARTICLE 4. A belligerent is allowed to lay mines off the coasts and ports of the enemy only for naval and military purposes. He is forbidden to lay them there in order to establish or maintain a commercial blockade.

ARTICLE 5. When anchored or unanchored automatic contact mines are used, all precautions must be taken for the security of peaceful navigation.

Belligerents shall, in especial, provide that the mines become harmless within a limited time.

In case the mines cease to be under their observation, the belligerents shall, as soon as military exigencies permit, notify the danger zones to mariners and also to the governments through the diplomatic channel.

ARTICLE 6. A neutral State may lay mines in its territorial waters for the defense of its neutrality. It should, in this case, observe the same rules and take the same precautions as are imposed on belligerents.

The neutral State should inform ship-owners, by a notice issued in advance, where automatic contact mines will be laid. This notice must be communicated at once to the governments through the diplomatic channel.

¹ *Ibid.*, vol. 24, pp. 286 *et seq.*, 301.

ARTICLE 7. The question of the laying of mines in straits is reserved, both as concerns neutrals and belligerents.

ARTICLE 8. At the close of the war the belligerent and neutral States shall do their utmost to remove the mines which they have laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coasts of the other, their position shall be notified to the other party by the State which laid them, and each Power must proceed with the least possible delay to remove the mines in its own waters.

The belligerent and neutral States whose duty it is to remove the mines after the war must make known the date at which the removal of the mines is complete.

ARTICLE 9. A violation of one of the preceding rules entails responsibility therefor on the part of the State at fault.

The State which has laid the mine is presumed to be at fault unless the contrary is proved.

An action may be brought against the guilty State, even by individuals, before the competent international tribunal.

TEXT OF RESOLUTIONS ADOPTED ON THE SUBJECT OF INTERNATIONAL REGULA- TION OF THE USE OF INTERNATIONAL STREAMS ¹

At the Paris session, in the meeting of April 1, 1910,² Messrs. von Bar and Harburger proposed the question: "Determination of the rules of international law concerning international streams from the point of view of the exploitation of their motive power." The motion was adopted, and Mr. von Bar was designated as reporter. Mr. von Bar's reports and project³ were considered by the Institute at Madrid in the meetings of April 19 and 20, 1911, and the rules below were adopted:

Statement of Reasons ⁴

States bordering on the same streams are in a condition of permanent physical dependence upon each other, which

¹ *Annuaire*, vol. 24, p. 365.

² *Ibid.*, vol. 23, p. 498.

³ *Ibid.*, vol. 24, pp. 156, 168, 180.

⁴ This statement has not yet been submitted to a vote.

excludes the idea of complete autonomy for either along that portion of the natural course coming under its sovereignty.

International law having already considered the right of navigation on international rivers, the utilization of the water for manufacturing, agriculture, etc., has failed to contemplate all that this right entails.

It appears opportune, therefore, to supply this deficiency by stating the rules of law which arise from the unquestionable interdependence existing between States bordering on the same streams and between States whose territories are traversed by the same streams.

The right of navigation, in so far as it has already been regulated, or shall be regulated by international law, excepted:

The Institute of International Law is of the opinion that the following rules should be observed from the point of view of the utilization (in any way whatever) of international streams:

Rules

I. When a stream forms the frontier of two States, neither of these States may, without the consent of the other, and without special and valid legal title, make or allow individuals, corporations, etc., to make alterations therein detrimental to the bank of the other State. On the other hand, neither State may, on its own territory, utilize or allow the utilization of the water in such a way as seriously to interfere with its utilization by the other State or by individuals, corporations, etc., thereof.

The foregoing provisions are likewise applicable to a lake lying between the territories of more than two States.

II. When a stream traverses successively the territories of two or more States:

1. The point where this stream crosses the frontiers of two States, whether naturally, or since time immemorial, may not be changed by establishments of one of the States without the consent of the other.

2. All alterations injurious to the water, the emptying

therein of injurious matter (from factories, etc.), is forbidden.

3. No establishment (especially factories utilizing hydraulic power) may take so much water that the constitution, otherwise called the utilizable or essential character of the stream, shall, when it reaches the territory downstream, be seriously modified.

4. The right of navigation by virtue of a title recognized in international law may not be violated in any way whatever.

5. A State situated downstream may not erect or allow to be erected within its territory constructions or establishments which would subject the other State to the danger of inundation.

6. The foregoing rules are applicable likewise to cases where streams flow from a lake situated in one State, through the territory of another State, or the territories of other States.

7. It is recommended that the interested States appoint permanent joint commissions, which shall render decisions, or at least shall give their opinion, when from the building of new establishments or the making of alterations in existing establishments serious consequences might result in that part of the stream situated in the territory of the other State.

THE LEGAL STATUS OF AIRCRAFT

The question of the legal status of aircraft was placed on the calendar at the Neuchâtel session in 1900 on the motion of Mr. Fauchille, who was named reporter with Mr. Nys. At the Brussels session in 1902 Mr. Fauchille presented a report accompanied by draft resolutions in 32 articles, and Mr. Nys presented a second report¹ containing observations on Mr. Fauchille's project. At the close of the session Messrs. Fauchille and Nys proposed that the Institute limit the discussion to certain questions of principle. The Institute, on April 1, 1910,² during its Paris session, on Mr. Fauchille's request, created a committee

¹ *Annuaire*, vol. 19, pp. 19, 86.

² *Ibid.*, vol. 23, p. 497.

to study the question with him. The report¹ was accompanied by a new text,² which was discussed at Madrid in the meetings of April 18, 19, 20 and 21, 1911.³ The articles adopted follow:⁴

1. *Time of Peace*

1. Aircraft are distinguished as public aircraft and private aircraft.

2. Every aircraft must have a nationality, and one only. This nationality will be that of the country in which the aircraft has been registered. Every aircraft must bear special marks of identification.

The State in which registration is applied for determines to what persons and under what conditions registration will be granted, suspended, or withdrawn.

The State registering an aircraft belonging to an alien cannot, however, claim to protect such aircraft in the territory of the owner's State as against any laws of that State forbidding its nationals to have their aircraft registered in foreign States.

3. International aerial circulation is free, saving the right of subjacent States to take certain measures, to be determined, to ensure their own security and that of the persons and property of their inhabitants.

2. *Time of War*

1. Aerial war is allowed, but on the condition that it does not present for the persons or property of the peaceable population greater dangers than land or sea warfare.

EFFECT OF WAR ON TREATIES

The Council of the Institute, having selected as a subject for investigation the effects of war on international obligations and private contracts, appointed Mr. Politis reporter. Mr. Politis made a preliminary

¹ *Ibid.*, vol. 24, p. 39.

² *Ibid.*, p. 105. Printed in the appendix, *post*, p. 243. See also the draft proposed by Mr. von Bar, a member of the committee, *post*, p. 256.

³ *Ibid.*, vol. 24, pp. 303 *et seq.*

⁴ *Ibid.*, p. 346.

report¹ in 1910. His final report² dealt only with treaties, as some members of his committee had desired that private contracts form the subject of separate study. In 1912, at Christiania, the Institute discussed the project in the meetings of August 29, 30 and 31,³ and voted the following regulations:

TEXT OF THE REGULATIONS REGARDING THE EFFECT OF WAR ON TREATIES⁴

CHAPTER I

TREATIES BETWEEN BELLIGERENT STATES

ARTICLE 1. The opening and the carrying on of hostilities shall have no effect upon the existence of treaties, conventions and agreements, whatever be their title and subject, concluded between themselves by belligerent States. The same is true of the special obligations arising from the said treaties, conventions and agreements.

ARTICLE 2. War, however, automatically terminates:

1. Agreements of international associations, treaties of protection, control, alliance, guaranty; treaties concerning subsidies, treaties establishing a right of security or a sphere of influence, and, generally, treaties of a political nature;

2. All treaties, the application or the interpretation of which shall have been the direct cause of the war, in consequence of the official acts of either of the governments before the opening of hostilities.

ARTICLE 3. In applying the rule set forth in Article 2, account must be taken of the contents of the treaty. If, in the same act, occur clauses of different kinds, only those shall be considered annulled which come under the categories enumerated in Article 2. When, however, the treaty is of the character of an indivisible act, it terminates as a whole.

ARTICLE 4. The treaties which remain in force and the carrying out of which is still, in spite of hostilities, practically possible, shall be observed as in the past. Belligerent

¹ *Annuaire*, vol. 23, p. 251.

² *Ibid.*, vol. 25, p. 611.

³ *Ibid.*, vol. 24, p. 200.

⁴ *Ibid.*, p. 648.

States may not disregard them except to the degree and for the time required by the necessities of war.

ARTICLE 5. Treaties which have been concluded for the contingency of war are not covered by Articles 2, 3 and 4.

ARTICLE 6. Aside from the responsibility that would be incurred by the violation of these rules, they should serve to interpret the silence of and to supply the omissions in a treaty of peace. In default of a formal clause to the contrary in a peace treaty, it shall be decided:

1. That treaties affected by the war are definitively annulled;

2. That treaties not affected by the war, whether suspended or not during the progress of hostilities, are tacitly confirmed;

3. That treaties the clauses of which conflict with the contents of the peace treaty are nevertheless implicitly abrogated;

4. That the abrogation of a treaty, express or tacit, has no retroactive effect.

CHAPTER II

TREATIES BETWEEN BELLIGERENT STATES AND A THIRD STATE

ARTICLE 7. The provisions of Articles 1 to 6 shall apply, in the relations between belligerent States, to treaties concluded between them and a third State, with the following reservations.

ARTICLE 8. When the obligations which bind belligerent States in their relations with each other have the same object as their contracts with a third State, they shall be carried out in the interest of the latter. Thus collective treaties of guaranty shall remain in force in spite of war between two of the contracting States.

ARTICLE 9. Collective agreements shall remain in force in the relations of each of the belligerent States with the third contracting State.

They may not be altered by a treaty of peace to the

detriment of the third contracting State, without the participation or the consent of the latter.

ARTICLE 10. Treaties concluded between a belligerent State and a third State are not affected by the war.

ARTICLE 11. In default of a formal clause to the contrary or of a provision leaving no doubt as to the intention of the parties, collective treaties relating to the law of war apply only if the belligerents are all contracting parties.

THE LAWS OF NAVAL WAR GOVERNING THE RELATIONS BETWEEN BELLIGERENTS

The Institute, having appointed on April 1, 1910, a committee of nine to investigate subjects that ought to be considered by the approaching Third Hague Conference, this committee met in Paris in October, 1911, and as one result unanimously declared it desirable that the preparation of regulations concerning the laws and customs of war at sea with respect to the relations between belligerents be the first business on the program of the next Hague Conference. A special committee, with Mr. Fauchille as reporter, was at the same time designated to prepare a draft manual analogous to the *Oxford Manual of land warfare*. Mr. Fauchille's reports¹ were considered by the Institute at its Christiania session in 1912 (Meetings of August 27 and 28).² On the latter date the Institute increased the number of members on the committee to eleven and agreed on several guiding rules for the completion of the manual. Further reports were made by Mr. Fauchille,³ and the Institute at its Oxford session in 1913,⁴ after five days' deliberation, unanimously, save for one member not voting, adopted the text below:⁵

MANUAL ADOPTED BY THE INSTITUTE OF INTERNATIONAL LAW

PREAMBLE

The Institute of International Law, at its Christiania session, declared itself in favor of firmly upholding its former Resolutions on the abolition of capture and of confiscation of enemy private property in naval warfare. But at the

¹ *Annuaire*, vol. 25, pp. 41-374.

² *Ibid.*, vol. 26, pp. 23-402.

³ *Ibid.*, p. 641.

⁴ *Ibid.*, vol. 25, pp. 583-602.

⁵ *Ibid.*, p. 504.

same time being aware that this principle is not yet accepted, and deeming that, for so long as it shall not be, regulation of the right of capture is indispensable, it entrusted a commission with the task of drawing up stipulations providing for either contingency. In pursuance of this latter action, the Institute, at its Oxford session, on August 9, 1913, adopted the following Manual, based on the right of capture.¹

SECTION I.—ON LOCALITIES WHERE HOSTILITIES MAY
TAKE PLACE

ARTICLE 1. Rules peculiar to naval warfare are applicable only on the high seas and in the territorial waters of the belligerents, exclusive of those waters which, from the standpoint of navigation, ought not to be considered as maritime.

SECTION II.—ON THE ARMED FORCE OF BELLIGERENT
STATES

ARTICLE 2. *War-ships*. Constituting part of the armed force of a belligerent State and, therefore, subject as such to the laws of naval warfare are:

¹ DEFINITIONS: *Capture* is the act by which the commander of a war-ship substitutes his authority for that of the captain of the enemy ship, subject to the subsequent judgment of the prize court as to the ultimate fate of the ship and its cargo.

Seizure, when applied to a ship, is the act by which a war-ship takes possession of the vessel detained, with or without the consent of the captain of the latter. Seizure differs from capture in that the ultimate fate of the vessel may not be involved as a result of its condemnation.

Applied to goods alone, seizure is the act by which the war-ship, with or without the consent of the captain of the vessel detained, takes possession of the goods and holds them or disposes of them subject to the subsequent judgment of the prize court.

Confiscation is the act by which the prize court renders valid the capture of a vessel or the seizure of its goods.

The word *prize* is a general expression applying to a captured ship or to seized goods.

By *public ships* are meant all ships other than war-ships which, belonging to the State or to individuals, are set apart for public service and are under the orders of an officer duly commissioned by the State.

1. All ships belonging to the State which, under the direction of a military commander and manned by a military crew, carry legally the ensign and the pendant of the national navy.

2. Ships converted by the State into war-ships in conformity with Articles 3-6.

ARTICLE 3. *Conversion of public and private vessels into war-ships.* A vessel converted into a war-ship cannot have the rights and duties accruing to such vessels, unless it is placed under the direct authority, immediate control, and responsibility of the Power whose flag it flies.

ARTICLE 4. Vessels converted into war-ships must bear the exterior marks which distinguish the war-ships of their nationality.

ARTICLE 5. The commander must be in the service of the State and duly commissioned by the competent authorities; his name must appear on the list of officers of the fighting fleet.

ARTICLE 6. The crew must be subject to the rules of military discipline.

ARTICLE 7. Every vessel converted into a war-ship must observe in its operations the laws and customs of war.

ARTICLE 8. The belligerent who converts a vessel into a war-ship must, as soon as possible, announce such conversion in the list of war-ships.

ARTICLE 9. The conversion of a vessel into a war-ship may be accomplished by a belligerent only in its own waters, in those of an allied State also a belligerent, in those of the adversary, or, lastly, in those of a territory occupied by the troops of one of these States.

ARTICLE 10. *Conversion of war-ships into public or private vessels.* A war-ship may not, while hostilities last, be converted into a public or a private vessel.

ARTICLE 11. *Belligerent personnel.* Constituting part of the armed force of a belligerent State and, therefore, in so far as they carry on operations at sea, subject as such to the laws of naval warfare, are:

1. The personnel of the ships mentioned in Article 2;

2. The troops of the naval forces, active or reserve;
3. The militarized personnel on the seacoasts;
4. The regular forces, other than naval forces, or those regularly organized in conformity with Article 1 of the Hague Regulations of October 18, 1907, concerning the laws and customs of war on land.

ARTICLE 12. *Privateering, private vessels, public vessels not war-ships.* Privateering is forbidden.

Apart from the conditions laid down in Articles 3 and following, neither public nor private vessels, nor their personnel, may commit acts of hostility against the enemy.

Both may, however, use force to defend themselves against the attack of an enemy vessel.

ARTICLE 13. *Population of unoccupied territory.* The inhabitants of a territory which has not been occupied who, upon the approach of the enemy, spontaneously arm vessels to fight him, without having had time to convert them into war-ships in conformity with Articles 3 and following, shall be considered as belligerents, if they act openly and if they respect the laws and usages of war.

SECTION III.—ON MEANS OF INJURING THE ENEMY

ARTICLE 14. *Principle.* The right of belligerents to adopt means of injuring the enemy is not unlimited.

ARTICLE 15. *Treacherous and barbarous methods.* Ruses of war are considered permissible. Methods, however, which involve treachery are forbidden.

Thus it is forbidden:

1. To kill or wound treacherously individuals belonging to the opposite side;
2. To make improper use of a flag of truce, to make use of false flags, uniforms, or insignia, of whatever kind, especially those of the enemy, as well as of the distinctive badges of the medical corps indicated in Articles 41 and 42.

ARTICLE 16. In addition to the prohibitions which shall be established by special conventions, it is forbidden:

1. To employ poison or poisoned weapons, or projectiles

the sole object of which is the diffusion of asphyxiating or deleterious gases;

2. To employ arms, projectiles, or materials calculated to cause unnecessary suffering. Entering especially into this category are explosive projectiles or those charged with fulminating or inflammable materials, less than 400 grams in weight, and bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not cover the core entirely or is pierced with incisions.

ARTICLE 17. It is also forbidden:

1. To kill or to wound an enemy who, having laid down his arms or having no longer means of defense, has surrendered at discretion;

2. To sink a ship which has surrendered, before having taken off the crew;

3. To declare that no quarter will be given.

ARTICLE 18. Pillage and devastation are forbidden.

It is forbidden to destroy enemy property, except in the cases where such destruction is imperatively required by the necessities of war or authorized by provisions of the present regulations.

ARTICLE 19. *Torpedoes*. It is forbidden to employ torpedoes which do not become harmless when they have missed their mark.

ARTICLE 20. *Submarine mines*. It is forbidden to lay automatic contact mines, anchored or not, in the open sea.

ARTICLE 21. Belligerents may lay mines in their territorial waters and in those of the enemy.

But it is forbidden, even in territorial waters:

1. To lay unanchored automatic contact mines unless they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings.

ARTICLE 22. A belligerent may not lay mines along the coast and harbors of his adversary except for naval and mili-

tary ends. He is forbidden to lay them there in order to establish or to maintain a commercial blockade.

ARTICLE 23. When automatic contact mines, anchored or unanchored, are employed, every precaution must be taken for the security of peaceful shipping.

The belligerents must do their utmost to render these mines harmless within a limited time.

Should the mines cease to be under surveillance, the belligerents shall notify the danger zones as soon as military exigencies permit, by a notice addressed to ship-owners, which must also be communicated to the governments through the diplomatic channel.

ARTICLE 24. At the close of the war, the belligerent States shall do their utmost to remove the mines that they have laid, each one its own.

As regards the anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the State that has laid them, and each State must proceed, with the least possible delay, to remove the mines in its own waters.

Belligerent States upon whom rests the obligation of removing these mines after the war is over shall, with as little delay as possible, make known the fact that, so far as is possible, the mines have been removed.

ARTICLE 25. *Bombardment.* The bombardment of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place cannot be bombarded solely because submarine automatic contact mines are anchored off its coast.

ARTICLE 26. Military works, military or naval establishments, depots of arms or war *matériel*, workshops or plants which could be utilized for the needs of the hostile fleet or army, and the war-ships in the harbor, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the case given in paragraph 1, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

ARTICLE 27. The bombardment of undefended ports, towns, villages, dwellings, or buildings because of the non-payment of contributions of money, or the refusal to comply with requisitions for provisions or supplies is forbidden.

ARTICLE 28. In bombardments all useless destruction is forbidden, and especially should all necessary measures be taken by the commander of the attacking force to spare, as far as possible, sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on condition that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two colored triangular portions, the upper portion black, the lower portion white.

ARTICLE 29. If the military situation permits, the commander of the attacking naval force, before commencing the bombardment, must do his utmost to warn the authorities.

ARTICLE 30. *Blockade.* Ports and coasts belonging to the enemy or occupied by him may be subjected to blockade according to the rules of international law.

SECTION IV.—ON THE RIGHTS AND DUTIES OF THE BELLIGERENT WITH REGARD TO ENEMY PROPERTY

ARTICLE 31. *A. Ships and cargoes—War-ships.* The armed forces of a State may attack the enemy's war-ships, to

take possession of them or to destroy them, together with their equipment and supplies, whether these ships, at the beginning of the struggle, are in a harbor of the State, or are encountered at sea, in ignorance of hostilities; or by *force majeure* are either compelled to enter a port, or are cast on the shores of said State.

ARTICLE 32. *Public and private vessels—Stopping, visit, and search.* All vessels other than those of the navy, whether they belong to the State or to individuals, may be summoned by a belligerent war-ship to stop that a visit and search may be conducted on board them.

The belligerent war-ship, in ordering a vessel to stop, shall fire a charge of powder as a summons and, if that warning is not sufficient, shall fire a projectile across the bow of the vessel. Previously or at the same time, the war-ship shall hoist its flag, above which, at night, a signal light shall be placed. The vessel answers the signal by hoisting its own flag and by stopping at once; whereupon, the war-ship shall send to the stopped vessel a launch manned by an officer and a sufficient number of men, of whom only two or three shall accompany the officer on board the stopped vessel.

Visit consists in the first place in an examination of the ship's papers.

If the ship's papers are insufficient or not of a nature to allay suspicion, the officer conducting the visit has the right to proceed to a search of the vessel, for which purpose he must ask the coöperation of the captain.

Visit of post packets must, as Article 53 says, be conducted with all the consideration and all the expedition possible.

Vessels convoyed by a neutral war-ship are not subject to visit except in so far as permitted by the rules relating to convoys.

ARTICLE 33. *Principle of capture.* Public and private vessels of enemy nationality are subject to capture, and enemy goods on board, public or private, are liable to seizure.

ARTICLE 34. Capture and seizure are permitted even when the vessels or the goods have fallen into the power of

the belligerent because of *force majeure*, through shipwreck or by being compelled to put into port.

ARTICLE 35. Vessels which possess no ship's papers, which have intentionally destroyed or hidden those that they had, or which offer false ones, are liable to seizure.

ARTICLE 36. *Extenuation of the principle of capture.* When a public or private vessel belonging to one of the belligerent Powers is, at the commencement of hostilities, in an enemy port, it is allowed to depart freely, immediately or after a reasonable number of days of grace, and to proceed, after having been furnished with a passport, to its port of destination, or to any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered an enemy port while still ignorant of hostilities.

ARTICLE 37. The public or private vessel unable, owing to circumstances of *force majeure*, to leave the enemy port within the period contemplated in the preceding article, cannot be captured.

The belligerent may only detain it without payment of compensation but subject to the obligation of restoring it after the war, or requisition it on payment of compensation.

ARTICLE 38. Enemy vessels, public or private, which left their last port of departure before the commencement of the war and which are encountered on the high seas while still ignorant of the outbreak of hostilities, cannot be captured. They are only liable to detention on the understanding that they shall be restored after the war without compensation, or requisitioned, or even destroyed, on payment of compensation, but in such case provision must be made for the safety of the passengers on board as well as for the security of the ship's papers.

But, where these vessels shall be encountered at sea before the expiration of a sufficient period to be granted by the belligerent, seizure is not permissible. Vessels thus encountered are free to proceed to their port of destination or to any other port indicated.

After touching at a port in their own country or at a neutral port, these vessels are subject to capture.

ARTICLE 39. Enemy cargo found on board the ships detained under Articles 37 and 38 may likewise be held. It must be restored after the termination of the war without payment of indemnity, unless requisitioned on payment of compensation.

The same rule is applicable to goods which are contraband of war found on board the vessels mentioned in Articles 36, 37 and 38, even when these vessels are not subject to capture.

ARTICLE 40. In all cases considered in Articles 36, 37 and 38, public or private ships whose build shows that they are intended for conversion into war-ships, may be seized or requisitioned upon payment of compensation. These vessels shall be restored after the war.

Goods found on board these ships shall be dealt with according to the rules in Article 39.

ARTICLE 41. *Exceptions to the principles in Articles 31 and 32—Hospital ships.* Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assisting the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected, and cannot be captured while hostilities last.

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half (five feet) in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with the red cross provided by the Geneva Convention.

The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they

are entitled, must, subject to the belligerent they are accompanying, take the measures necessary to render their special painting sufficiently plain.

The distinguishing signs referred to in this article can be used only for protecting or indicating the ships herein mentioned.

These ships cannot be used for any military purpose.

They must in no wise hamper the movements of the combatants.

During and after an engagement, they will act at their own risk and peril.

The belligerents shall have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible, the belligerents shall enter in the log of the hospital ships the orders which they give them.

Hospital ships which, under the terms of this article, are detained by the enemy, must haul down the national flag of the belligerent to whom they belong.

ARTICLE 42. Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships must be provided with a certificate from competent authorities declaring that the vessels have been under their control while fitting out and on final departure.

The ships in question shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half (five feet) in breadth.

They are subject to the regulations laid down for military hospital ships by Article 41.

ARTICLE 43. In case of a fight on board a war-ship, the sick-wards and the *matériel* belonging to them shall be re-

spected and spared as far as possible. Although remaining subject to the laws of war, they cannot be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded. The commander into whose power they have fallen may, however, apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

ARTICLE 44. Hospital ships and sick-wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy. The fact that the staff of the said ships and sick-wards is armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, are not sufficient reasons for withdrawing protection.

ARTICLE 45. *Cartel ships.* Ships called cartel ships, which act as bearers of a flag of truce, may not be seized while fulfilling their mission, even if they belong to the navy.

A ship authorized by one of the belligerents to enter into a parley with the other and carrying a white flag is considered a cartel ship.

The commanding officer to whom a cartel ship is sent is not obliged to receive it under all circumstances. He can take all measures necessary to prevent the cartel ship from profiting by its mission to obtain information. In case it abuses its privileges, he has the right to hold the cartel ship temporarily.

A cartel ship loses its rights of inviolability if it is proved, positively and unexceptionably, that the commander has profited by the privileged position of his vessel to provoke or to commit a treacherous act.

ARTICLE 46. *Vessels charged with missions.* Vessels charged with religious, scientific, or philanthropic missions are exempt from seizure.

ARTICLE 47. *Vessels used exclusively for fishing along the coast and for local trade.* Vessels used exclusively for fishing along the coast, or for local trade, under which term are included those used exclusively for piloting or for light-

house service, as well as the boats meant principally for the navigation of rivers, canals, and lakes, are exempt from seizure, together with their appliances, rigging, tackle and cargo.

It is forbidden to take advantage of the harmless character of said boats in order to use them for military purposes while preserving their peaceful appearance.

ARTICLE 48. *Vessels furnished with a safe-conduct or a license.* Enemy vessels provided with a safe-conduct or a license are exempt from seizure.

ARTICLE 49. *Suspension of immunities.* The exceptions considered in Articles 41, 42, 45, 46, 47 and 48 cease to be applicable if the vessels to which they refer participate in the hostilities in any manner whatsoever or commit other acts which are forbidden to neutrals as unneutral service.

The same suspension occurs if, summoned to stop to submit to search, they seek to escape by force or by flight.

ARTICLE 50. *Rights of the belligerent in the zone of operations.* When a belligerent has not the right of seizing or of capturing enemy vessels, he may, even on the high seas, forbid them to enter the zone corresponding to the actual sphere of his operations.

He may also forbid them within this zone to perform certain acts calculated to interfere with his activities, especially certain acts of communication, such, for example, as the use of wireless telegraphy.

The simple infraction of these prohibitions will entail driving the vessel back, even by force, from the forbidden zone and the sequestration of the apparatus. The vessel, if it be proved that it has communicated with the enemy to furnish him with information concerning the conduct of hostilities, can be considered as having placed itself at the service of the enemy and, consequently, with its apparatus, shall be liable to capture.

ARTICLE 51. *Enemy character.* The enemy or neutral character of a vessel is determined by the flag which it is entitled to fly.

The enemy or neutral character of goods found on board

an enemy vessel is determined by the enemy or the neutral character of the owner.

Each State must declare, not later than the outbreak of hostilities, whether the enemy or neutral character of the owner of the goods is determined by his place of residence or his nationality.

Enemy goods found on board an enemy ship retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

ARTICLE 52. *Transfer to a neutral flag.* The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel as such is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost its belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void; this presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

The transfer of an enemy vessel to a neutral flag effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There is, however, an absolute presumption that a trans-

fer is void: 1. if the transfer has been made during a voyage or in a blockaded port; 2. if a right to repurchase or recover the vessel is reserved to the vendor; 3. if the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled.

ARTICLE 53. *B. Postal correspondence.* Postal correspondence, whatever its official or private character may be, found on the high seas on board an enemy ship, is inviolable, unless it is destined for or proceeding from a blockaded port.

The inviolability of postal correspondence does not exempt mail-boats from the laws and customs of maritime war as to ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

If the ship on which the mail is sent be seized, the correspondence is forwarded by the captor with the least possible delay.

ARTICLE 54. *C. Submarine cables.* In the conditions stated below, belligerent States are authorized to destroy or to seize only the submarine cables connecting their territories or two points in these territories, and the cables connecting the territory of one of the nations engaged in the war with a neutral territory.

The cable connecting the territories of the two belligerents or two points in the territory of one of the belligerents, may be seized or destroyed throughout its length, except in the waters of a neutral State.

A cable connecting a neutral territory with the territory of one of the belligerents may not, under any circumstances, be seized or destroyed in the waters under the power of a neutral territory. On the high seas, this cable may not be seized or destroyed unless there exists an effective blockade and within the limits of that blockade, on consideration of the restoration of the cable in the shortest time possible. This cable may be seized or destroyed on the territory of and in the waters belonging to the territory of the enemy for a distance of three marine miles from low tide. Seizure or

destruction may never take place except in case of absolute necessity.

In applying the preceding rules no distinction is to be made between cables, according to whether they belong to the State or to individuals; nor is any regard to be paid to the nationality of their owners.

Submarine cables connecting belligerent territory with neutral territory, which have been seized or destroyed, shall be restored and compensation fixed when peace is made.

SECTION V.—ON THE RIGHTS AND DUTIES OF THE BELLIGERENT WITH REGARD TO INDIVIDUALS

ARTICLE 55. *A. Personnel of vessels—War-ships.* When a war-ship is captured by the enemy, combatants and non-combatants forming part of the armed forces of the belligerents, are to be treated as prisoners of war.

ARTICLE 56. *Public or private vessels.* When an enemy ship, public or private, is seized by a belligerent, such of its crew as are nationals of a neutral State, are not made prisoners of war. The same rule applies in the case of the captain and officers likewise nationals of a neutral State, if they promise in writing not to take, during hostilities, any service connected with the operations of the war. The captain, officers and members of the crew, when nationals of the enemy State, are not made prisoners of war, on condition that they make a formal promise in writing not to undertake, while hostilities last, any service connected with the operations of the war.

ARTICLE 57. The names of the persons retaining their liberty on condition of the promise provided for by the preceding article, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

ARTICLE 58. All persons constituting part of the crew of a public or a private enemy ship are, in the absence of proof to the contrary, presumed to be of enemy nationality.

ARTICLE 59. Members of the personnel of an enemy ship

which, because of its special character, is itself exempt from seizure, cannot be held as enemies.

ARTICLE 60. When a public or a private ship has directly or indirectly taken part in the hostilities, the enemy may retain as prisoners of war the whole personnel of the ship, without prejudice to the penalties he might otherwise incur.

ARTICLE 61. Members of the personnel of a public or of a private vessel, who are personally guilty of an act of hostility towards the enemy, may be held by him as prisoners of war, without prejudice to the penalties he might otherwise incur.

ARTICLE 62. *B. Passengers.* When individuals who follow a naval force without belonging to it, such as contractors, newspaper correspondents, etc., fall into the enemy's hands, and when the latter thinks it expedient to detain them, they may be detained only so long as military exigencies require. They are entitled to be treated as prisoners of war.

ARTICLE 63. Passengers who, without forming part of the crew, are on board an enemy ship, may not be detained as prisoners of war, unless they have been guilty of a hostile act.

All passengers included in the armed force of the enemy may be made prisoners of war, even if the vessel is not subject to seizure.

ARTICLE 64. *C. Religious, medical, and hospital personnel.* The religious, medical, and hospital staff of every vessel taken or seized is inviolable, and its members may not be made prisoners of war. On leaving the ship they take away with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave, when the commander in chief considers it possible.

The belligerents must guarantee to the said staff, when it has fallen into their hands, the same allowances and pay which are given to the staff of corresponding rank in their own navy.

The commissioner put by the belligerent on board the hospital ship of his adversary, in conformity with paragraph 10 of Article 41, enjoys the same protection as the medical staff.

The religious, medical, and hospital staffs lose their rights of inviolability, if they take part in hostilities, if, for example, they use their arms otherwise than for defense.

ARTICLE 65. *D. Parlementaires.* The personnel of cartel ships is inviolable.

It loses its rights of inviolability if it is proved in a clear and incontestable manner that it has taken advantage of its privileged position to provoke or commit an act of treason.

ARTICLE 66. *E. Spies.* A spy, even when taken in the act, may not be punished without first being tried.

ARTICLE 67. A person can be considered a spy only when, acting clandestinely or on false pretenses, thus concealing his operations, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Hence, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile fleet for the purpose of obtaining information, may not be considered as spies but are to be treated as prisoners of war. Similarly, soldiers or civilians, carrying out their mission openly, intrusted with the delivery of dispatches, or engaged in transmitting and receiving dispatches by wireless telegraphy, are not to be considered spies. To this class belong likewise persons sent in air-ships or in hydro-aeroplanes to act as scouts in the zone of operations of the enemy fleet or to maintain communications.

ARTICLE 68. The spy who succeeds in escaping from the zone corresponding to the enemy's actual sphere of operations, or who has rejoined the armed force to which he belongs, if he later falls into the power of the enemy, incurs no responsibility for his previous acts.

ARTICLE 69. *F. Requisition of nationals of the enemy State—Guides, pilots, and hostages.* A belligerent has no right to force persons who fall into his power, or nationals

of the adverse party in general, to take part in the operations of the war directed against their own country, even when they were in his service before the beginning of the war, or to compel them to furnish information concerning their own State, its forces, its military position, or its means of defense.

He can not force them to act as guides or as pilots.

He may, however, punish those who knowingly and voluntarily offer themselves in order to mislead him.

Compelling nationals of a belligerent to swear allegiance to the enemy Power is not permitted.

The taking of hostages is forbidden.

ARTICLE 70. *G. Prisoners of war.* Prisoners of war are in the power of the hostile government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses, military papers, and all objects in general which are specially adapted to a military end, remain their property.

ARTICLE 71. Prisoners of war may be interned on a ship only in case of necessity and temporarily.

ARTICLE 72. The government into whose hands prisoners of war have fallen is charged with their maintenance.

ARTICLE 73. All prisoners of war, so long as they are on board a ship, shall be subject to the laws, regulations, and orders in force in the navy of the State in whose power they are.

ARTICLE 74. Escaped prisoners who are retaken before succeeding in escaping from the enemy's actual sphere of action, or before being able to rejoin the armed force to which they belong, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight.

ARTICLE 75. Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed.

ARTICLE 76. Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honor, scrupulously to fulfil, both towards their own government and the government by whom they were made prisoners, the engagements they have contracted.

In such cases their own government is bound neither to require nor to accept from them any service incompatible with the parole given.

ARTICLE 77. A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ARTICLE 78. Prisoners of war liberated on parole and recaptured bearing arms against the government to whom they had pledged their honor, or against the allies of that government, forfeit their right to be treated as prisoners of war, and can be brought before the courts, unless, subsequent to their liberation, they have been included in an unconditional cartel of exchange.

ARTICLE 79. Prisoners in naval warfare disembarked on land are subject to the rules laid down for prisoners in land warfare.

The same regulations should be applied, as far as possible, to prisoners of war interned on a vessel.

The preceding rules must, as far as it is possible to apply them, be followed toward prisoners of war from the moment they are captured, when they are on the ship which takes them to the place of their internment.

ARTICLE 80. After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

ARTICLE 81. *H. Wounded, sick, shipwrecked and dead.* Vessels used for hospital service shall afford relief and assistance to the wounded, sick and shipwrecked of the belligerents without distinction of nationality.

ARTICLE 82. In case of the capture or seizure of an enemy vessel or a hospital ship that has failed in its duty,

the sailors and soldiers on board, when sick or wounded, as well as other persons officially attached to fleets or armies, whatever their nationality, shall be respected and tended by their captors.

ARTICLE 83. Any war-ship belonging to a belligerent may demand that sick, wounded or shipwrecked men on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant ships, yachts, or boats, whatever the nationality of these vessels, should be handed over.

ARTICLE 84. The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other belligerent are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

ARTICLE 85. After every engagement, the two belligerents, so far as military interests permit, shall take steps to look for the shipwrecked and wounded, and to protect them, as well as the dead, from pillage and ill-treatment.

They shall see that the burial, whether by land or sea, or the cremation of the dead shall be preceded by a careful examination of the corpse.

ARTICLE 86. Each belligerent shall send, as early as possible, to the authorities of their country, their navy, or their army the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other informed as to internments and transfers as well as to admissions into hospitals and the deaths which have occurred among the sick and wounded in their hands. They shall collect, in order to have them forwarded to the persons concerned by the authorities of their own country, all the objects of personal use, valuables, letters, etc., which are found in the captured or seized ships, or which have been left by the sick or wounded who died in hospital.

ARTICLE 87. In the case of operations of war between the land and sea forces of belligerents, the provisions of the present regulations on hospital assistance do not apply except between the forces actually on board ship.

SECTION VI.—ON THE RIGHTS AND DUTIES OF THE BELLIGERENT IN OCCUPIED TERRITORY

ARTICLE 88. *Occupation: extent and effects.* Occupation of maritime territory, that is of gulfs, bays, roadsteads, ports, and territorial waters, exists only when there is at the same time an occupation of continental territory, by either a naval or a military force. The occupation, in that case, is subject to the laws and usages of war on land.

SECTION VII.—ON CONVENTIONS BETWEEN BELLIGERENTS

ARTICLE 89. *General rules.* The commander of any belligerent naval force may conclude agreements of a purely military character concerning the forces under his command.

He may not, without authority from his government, conclude any agreement of a political character, such as a general armistice.

ARTICLE 90. All agreements between belligerents must take into account the rules of military honor, and, once settled, must be scrupulously observed by the two parties.

ARTICLE 91. *Capitulation.* After having concluded a capitulation the commander may neither damage nor destroy the ships, objects, or supplies in his possession, but must surrender them unless the right of so doing has been expressly reserved to him in the terms of the capitulation.

ARTICLE 92. *Armistice.* An armistice suspends military operations.

Blockades established at the time of the armistice are not raised, unless by a special stipulation of the agreement.

The exercise of the right of visit continues to be permitted. The right of capture ceases except in cases where it exists with regard to neutral vessels.

ARTICLE 93. An armistice may be general or partial. The first suspends the military operations of the belligerent States everywhere; the second, only between certain portions of the belligerent forces and within a fixed radius.

ARTICLE 94. The agreement which proclaims an armistice must indicate precisely the moment it is to begin and the moment it is to end.

An armistice must be notified officially and in good time to the competent authorities as well as to the forces engaged.

ARTICLE 95. Hostilities are suspended at the date fixed by the agreement, or, if no date has been set, immediately after the notification.

If the duration of the armistice has not been defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned in good time.

ARTICLE 96. The terms of a naval armistice shall settle, in cases where they permit the approach of enemy warships to certain points of the enemy's coast, the conditions of this approach and the communications of these ships either with the local authorities, or with the inhabitants.

ARTICLE 97. Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

ARTICLE 98. A violation of the terms of the armistice by isolated individuals, acting on their own initiative, entitles the injured party only to demand the punishment of the offenders or, if necessary, compensation for the losses sustained.

ARTICLE 99. *Suspension of arms.* A suspension of arms must, like an armistice, determine precisely the moment when hostilities are to be suspended and the moment when it ceases to be effective.

If no time is set for resuming hostilities, the belligerent who intends to continue the struggle must warn the enemy of his intention in good time.

The rupture of a suspension of arms by one of the bel-

ligerents or by isolated individuals entails the consequences stated in Articles 97 and 98.

SECTION VIII.—ON THE FORMALITIES OF SEIZURE AND ON PRIZE PROCEDURE

ARTICLE 100. *Formalities of seizure.* When, after the search has been conducted, the vessel is considered subject to capture, the officer who seizes the ship must:

1. Seal all the ship's papers after having inventoried them;

2. Draw up a report of the seizure, as well as a short inventory of the vessel stating its condition;

3. State the condition of the cargo which he has inventoried, then close the hatchways of the hold, the chests and the store-room and, as far as circumstances will permit, seal them;

4. Draw up a list of the persons found on board;

5. Put on board the seized vessel a crew sufficient to retain possession of it, maintain order upon it, and conduct it to such port as he may see fit.

If he thinks fit, the captain may, instead of sending a crew aboard a vessel, confine himself to escorting it.

ARTICLE 101. Except for persons who may be considered prisoners of war or who are liable to punishment, a belligerent may not detain on a seized ship for more than a reasonable time, those necessary as witnesses in ascertaining the facts; but for insurmountable obstacles he must set them at liberty after the *procès-verbal* of their depositions has been drawn up.

If special circumstances require it, the captain, the officers, and a part of the crew of the captured ship may be taken on board the captor.

The captor shall attend to the maintenance of the persons detained, and shall always give them, as well as the crew, when they are set at liberty, means temporarily necessary for their further maintenance.

ARTICLE 102. The seized ship must be taken to the near-

est possible port belonging either to the captor State or to an allied belligerent Power, which offers safe refuge, and has means of easy communication with the prize court charged with deciding upon the capture.

During the voyage, the prize shall sail under the flag and the pendant carried by the war-ships of the State.

ARTICLE 103. The seized ship and its cargo shall, as far as possible, be kept intact during the voyage to port.

If the cargo includes articles liable to deteriorate easily, the captor, so far as possible with the consent of the captain of the seized ship and in his presence, shall take the best measures toward the preservation of these articles.

ARTICLE 104. *Destruction of vessels and goods liable to confiscation.* Belligerents are not permitted to destroy seized enemy ships, except in so far as they are subject to confiscation and because of exceptional necessity, that is, when the safety of the captor ship or the success of the war operations in which it is at that time engaged, demands it.

Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the war-ship. The same rule shall hold, as far as possible, for the goods.

A *procès-verbal* of the destruction of the captured ship and of the reasons which led to it must be drawn up.

ARTICLE 105. The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under the preceding article, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the log-book of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly

carried out, the master must be allowed to continue his voyage.

ARTICLE 106. *Use of captured ships.* If the captured ship or its cargo is necessary to the captor for immediate public use, he may use them thus. In this case, impartial persons shall make a careful estimate and inventory of the ship and its cargo, and this estimate shall be sent, together with the account of the capture, to the prize court.

ARTICLE 107. *Loss of prizes through the perils of the sea.* If a prize is lost by the perils of the sea, the fact must be carefully ascertained. In that case no indemnity is due, either for the ship or for the cargo, provided that if the prize be subsequently annulled the captor is able to prove that the loss would have occurred even without capture.

ARTICLE 108. *Recapture.* When a ship has been taken and retaken and is then captured from the recaptor, the last captor only has the right to it.

ARTICLE 109. *Prize procedure.* The captured vessel and its cargo, once in the port of the captor or of an allied State, shall be turned over, with all necessary documents, to the competent authority.

ARTICLE 110. The legality and the regularity of the capture of enemy vessels and of the seizure of goods must be established before a prize court.

ARTICLE 111. All recaptures must likewise be judged by a prize court.

ARTICLE 112. A belligerent State shall not obtain possession of the ship or goods that it has seized during the war until such time as, by final decree, the prize court shall have adjudged the confiscation of the said ship or said goods in its favor.

ARTICLE 113. If the seizure of the ship or of the goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or the goods.

ARTICLE 114. In case of the destruction of a vessel, the captor shall be required to compensate the parties interested, unless he is able to justify the exceptional necessity of the destruction, or unless, the destruction having been justified, the capture is subsequently declared void.

The same rule is applicable to the case provided for in Article 105.

If goods not liable to confiscation have been destroyed, the owner of the goods has a right to an indemnity.

In the case of a captor's using the ship or the cargo after the seizure, he must, if his act is held to have been illegal, pay the interested parties an equitable indemnity, according to the documents drawn up at the time the vessel or goods were used.

ARTICLE 115. Unlike non-military public ships and enemy private ships, belligerent war-ships taken by the adversary, as well as their *matériel*, become the property of the latter as soon as they fall into his possession, without the decision of a prize court being necessary.

SECTION IX.—ON THE END OF HOSTILITIES

ARTICLE 116. *Peace.* Acts of hostility must cease upon the signing of the treaty of peace.

Notice of the end of the war shall be communicated by each government to the commander of its naval forces with as little delay as possible.

When hostile acts have been committed after the signing of the treaty of peace, the former status must, as far as possible, be restored.

When they have been committed after the official notification of the treaty of peace, they entail the payment of an indemnity and the punishment of the guilty.

ADDITIONAL ARTICLE

In conformity with Article 3 of the Hague Convention of October 18, 1907, concerning the laws and customs of

war on land, the belligerent party which violates the provisions of the present regulations shall, if the case demands, be obliged to pay compensation; it shall be responsible for all acts committed by persons forming part of its armed naval forces.

APPENDIX

APPENDIX

MR. GOLDSCHMIDT'S DRAFT REGULATIONS FOR INTERNATIONAL TRIBUNALS ¹

Preliminary Remarks

Up to the present time there have been no generally accepted rules for the *formation of international arbitral tribunals* or for the procedure in such tribunals.

The present draft is intended to pave the way for the acceptance of such rules and to serve as a subsidiary law in case of doubt.

These regulations pertain only to *international arbitral tribunals*:

1. Hence they do not concern: (a) mediators; (b) congresses of States; (c) permanent international commissions; (d) permanent international tribunals.

2. They concern only arbitral tribunals which are to decide disputes *between States*.

1

(a) The duty of mediators is to bring about between the contending parties a friendly arrangement or a reconciliation. It is a matter of indifference whether the mediation is requested by one of the two parties, whether the mediator has offered his services to the parties, or whether the parties have agreed by a convention to request or to consent to mediation, should a dispute arise, before resorting to force.²

(b) *Congresses of States* decide differences with or without the authority and with or without the coöperation of the contending

¹ *Revue de droit international et de législation comparée*, vol. vi, p. 421.

² See the Treaty of Paris of March 30, 1856, Article 8.

Cf. Digest (*Corpus Iuris Civilis*), *De receptis*, 4, 8, 13, 2; *De iudiciis*, 5, 1, 81.

Bulmerincq, article entitled *Vermittelung* in the *Rechtslexikon* of Holtzendorff, II, pp. 620-622.

parties. They prescribe obedience to their decisions or impose it by force.¹

(c) *Permanent international commissions.* Examples: Commissions for the regulation of navigation on the Danube and the Rhine, at times with jurisdiction.²

(d) *Permanent international tribunals.* Such an institution is unknown in existing international law, and obstacles, difficult to overcome, seem to stand in the way of its creation between absolutely sovereign States, which no bond, not even that of a federative constitution, subjects to a common authority.³

If this plan could be realized, it goes without saying that it would be necessary to reach an agreement on fixed rules pertaining to the composition of the tribunals and to the procedure. It is therefore superfluous to examine here the principles which it would be proper to sanction.

2

Claims brought against a foreign State by an individual may give rise to an international arbitration, in so far as the State to which the individual belongs takes up the cause of its subject and executes a *compromis*, or itself acts as a party. Such cases frequently occur (claims).

It is also possible that an actual *compromis* may be concluded between an individual and a foreign State. In such an event, there is no occasion to deviate from the principles of national law governing such a *compromis*. The decision of the arbitral tribunal

¹ Projects: Grotius, *De jure belli ac pacis*, II, 23, 8, etc. Circular of Napoleon III of 1863 and replies of the European Powers. Aegidi and Klauhold's *Staatsarchiv*, V, nos. 918, 964, 985. Protocol of the Declaration of Aix-la-Chapelle of November 15, 1818. Practice of the Congresses of the Pentarchy. Heffter, *Droit des Gens*, annex XIII, p. 240. D. D. Field, *Outlines*, p. 538.

Cf. *Die völkerrechtliche Bedeutung der Staatencongresse* by Witold Zaleski, Dorpat, 1874.

² The Rhine Navigation Act of June 9, 1815, Article 9, of October 17, 1868, Article 43, 37 *et seq.* Asser, *Over de nieuwe Rynvaartsconventie*, 1869. *Revue de droit international*, I, pp. 494 *et seq.*

³ Proposals of Messrs. D. D. Field, *Outlines*, 535 *et seq.*; E. de Laveleye, *Des causes actuelles de guerre en Europe et de l'arbitrage*, Brussels and Paris, 1873, ch. IV-X.

shall, either by itself or by the judgment of a regular judge, be executory also against the State involved, regarded purely as a financial organization (*fisc*); that is to say, as subject to private law. The only question which can eventually arise is that of the effect and executory force of foreign arbitral awards.

What is to be understood here by *disputes*? Mr. Trendelenburg in his book on the gaps in international law (*Lücken im Völkerrecht*, p. 21) makes the following perfectly just remark: "An arbitral award may not be rendered except on points in the international dispute which are of a legal nature." There are no grounds for a judicial decision, nor consequently for an arbitral decision, in differences which are not legal disputes (*Rechtstreitigkeiten*), whose nature does not admit of a judgment according to the rules of law.

It is true that recent practice in the United States of America¹ and the resolutions lately adopted by the English Parliament, on the motion of Mr. Richard, and by the Italian Parliament, on the motion of Mr. Mancini, open a vast field for arbitral decisions in international differences. We may hope that the *compromis* clause will become more and more customary in future treaties for disputes which may arise between the contracting States as to the content and execution of the treaty in which the clause is inserted. It will be remembered that during the French Revolution there was an agitation, which naturally did not succeed, with a view to substituting arbitral tribunals for regular tribunals.² The chances of success are very much greater in the international field, where there is no question of discarding an organized court, but of opening the way for a court and of restricting the appeal to force. However, it is difficult to imagine that sovereign States, and especially the great Powers, will ever consent, in advance and for all possible cases, to submit to the awards of an arbitral tribunal.

¹ See *Treaties and Conventions concluded between the United States of America and Other States since July, 1776*, revised ed., Washington, 1873. Especially the treaty with Chile, 1858, p. 130; with Venezuela, 1866, p. 895 *et seq.*; with Mexico, 1868, p. 581 *et seq.* (especially as to the last: *La comision mixta de reclamaciones Mexicanas y Americanas. Historia* by José Ignacio Rodriguez, Mexico, 1873); with Spain, 1871, p. 921; with Great Britain, Treaty of Washington of May 8, 1871, p. 813 *et seq.*

² Dalloz, *Répertoire*, new ed., under the word *Arbitrage*, I, no. 19 *et seq.*

Political disputes of a complex nature, in which questions of nationality, of the equality of rights, of supremacy, constitute either the substance or the latent, but real, cause of the difference—such disputes, we say, which by their very nature are not so much questions of law as of power, will always be withheld from such a mode of settlement. Never will States possessing any power of resistance bow before a judge when their supreme, or reputed supreme, interests are at stake. The best-intentioned efforts will perforce fail when confronted by these interests and the passions which they arouse. No arbitral tribunal could have prevented the centuries of struggle between England and France with regard to the English claims to portions of French territory, or the struggle between France and the House of Austria and of Spain for dominion in Italy, or that between the Dutch and the Spanish, or the Thirty Years' War, or the wars between Austria and Italy, Austria and Prussia, Germany and France, or the great American War. Neither Louis XIV nor Napoleon I would ever have consented to submit to arbitrators their claims to the dominion of the world. And if we examine the carefully collected examples of international arbitrations at various times,¹ we shall see that they involved disputes suitable for judicial decision, because the point at issue was clearly defined and capable of being decided by principles of law. Such was the case, to give a specific example, in the Anglo-American *compromis* in the *Alabama* and San Juan cases.

It must not be lost sight of, however, that great disputes between nations seldom have reached their full intensity at the start. In the beginning they are generally germs of little consequence, which gradually ripen and develop until they become menacing to

¹ Grotius, II, 23, 8; B. G. Struve, *Jurisprudentia heroïca*, Jena, 1743, ch. 1: *De observantia, judicio et arbitrio inter gentes*; Calvo, *Droit international*, 2d ed., vol. 1, Paris, 1870, p. 792-797; Pierantoni, *Gli arbitrati internazionali e il trattato di Washington*, Naples, 1872, pp. 65-85; De Laveleye, *Des causes actuelles*, particularly ch. vi. See also Bellaire, *Bulletin de la Société des Amis de la paix*, no. 5, July-August, 1872, pp. 27 *et seq.*, and compare W. B. Lawrence, *Note pour servir à l'histoire des arbitrages internationaux, à propos de l'étude historique de M. Henry Bellaire*, in the *Revue de droit international*, vol. vi, 1874, pp. 117 *et seq.* (in which Note Mr. Lawrence points out and carefully corrects the errors of fact committed by M. Bellaire in his work); Barrault, *Du tribunal international*, Geneva, 1872; Dalloz, under the word *Arbitrage*, I, 16.

peace. It is therefore quite possible that the difference may be kept from increasing in bitterness by a timely mediation or arbitral award.

We say *legal dispute* (*Rechtstreit*). We understand by that any dispute which is to be decided by principles of law. Included in this class are, to be specific, preliminary questions of all kinds, in which condemnation is not asked for, but merely the recognition of a contention or even a declaration—for instance, as to the extent of a territory in dispute and the correct interpretation of a treaty: thus, in the San Juan case (Treaty of Washington of May 8, 1871, Article 34). The exclusion of disputes as to possession¹ is not justifiable by the rule: *Nam possessoria judicia juris civilis sunt, jure gentium possidendi jus dominium sequitur*. In effect, the reason would not be either sufficient or just. It is true that the arbitrator must not confine himself to passing upon the question of possession when he is asked for a decision on the law. But there is nothing to prevent his deciding first, in the dispute on the law, the question of possession, nor is there anything to prevent his deciding the question of possession alone when the parties ask for a decision on the question of possession alone.²

The distinction drawn by some eminent writers³ between what is called *arbitratio* and what is called *arbitrium*, properly speaking, must not be rejected, as Mr. Bulmerincq would like to do,⁴ for the reason “that proof of a material error is admissible in every international arbitration.” But it needs to be rectified. It is incorrect to say that in an *arbitratio* it is a question of applying a principle on which the parties have already come to an agreement, while in an *arbitrium* it is a question of elucidating a dis-

¹ Grotius, III, 20, 48.

² Pufendorf, *De jure naturae et gentium*, Book V, ch. xiii, § 6; F. W. von Neumann, *De processu judicario in causis principum comment.* (*Jus princip. priv.* vol. viii), Frankfurt, 1753, Tit. I, § 19; Calvo, I, p. 791. See also Haldimand, *Diss. jur. inaug. de modo componendi controversias inter aequales et potissimum de arbitris compromissoriis*, Leyden, 1739, § 139 (a work frequently cited, executed with care, but treating international disputes only as a side issue).

³ See Heffter, § 109; Bluntschli, § 488.

⁴ See Holtzendorff's Encyclopaedia, *Rechtswexikon*, II, p. 414, under the word *Schiedsspruch*.

puted point and of settling it according to law and equity. Such is not the difference between *arbitrium* and *arbitratio*. On the one hand, mere questions of fact are not by any means exempt from a real arbitral decision, and the fact that the principle itself of the decision is already determined is not an essential characteristic of *arbitratio*. On the other hand, it is quite possible that the legal principles to be followed may be prescribed for arbiters properly so called. Such, for instance, was the case with the Geneva arbitral tribunal.¹ The eighteenth century doctrine² that the *arbiter* properly so called decides according to principles of law, the *arbitrator* solely according to equity, is not well founded either. The difference between *arbitrium* and *arbitratio*, between *arbiter* and *arbitrator* is still deeper, and it is only by a clear perception of it that we can understand the following important rule: "That the judgment of the arbiter is absolutely obligatory, while the declaration of the arbitrator is under the control of the judge and may be modified by him contrary to equity."³

The truth is as follows:

The arbiter must always decide a dispute between the parties. If, for example, they disagree as to what convention was entered into between the parties or what obligations flow from the convention, the two parties affirm *that a certain content of the treaty was desired in common*, but each of them affirms a *different* content. In so far as concordance of intent is not clearly established, each party appeals to a rule of law which is favorable to him; likewise as to the time or place for the fulfilment of the obligation, as to the currency in which payment must be made, etc.

The arbitrator⁴ must, by his decision, settle a point which the parties did not settle, but which they left open, either at the time the convention was concluded or at the time of its execution, and that purposely and with the intention of having it settled later by a third party: thus, the amount of a pur-

¹ Article 6 of the Treaty of Washington.

² Von Neumann, *loc. cit.*, § 20.

³ Digest, *Pro socio*, 17, 2, 76: "*Arbitrorum enim genera sunt duo, unum eiusmodi, ut sive aequum sit sive iniquum, parere debeamus (quod observatur, cum ex compromisso ad arbitrum itum est), alterum eiusmodi, ut ad boni viri arbitrium redigi debeat. . . .*"

⁴ Taxer, *Schätzer*.

chase price, of shares in a company, of a storage right, the quality of a work, the solvency of a surety, the extent of damage, the quality and quantity of goods delivered, etc. *The arbitrator must complete in the place and stead of the contracting parties, entering, as it were, into their minds, the determination of points which the latter have left incomplete.*¹

But in settling such points the rule is that the contracting parties expect from the arbitrator an *equitable* decision, that is to say, in conformity with the circumstances, and that if they are disappointed in this expectation, if the *arbitrator* does not settle the point as a *vir bonus*, there is a *reductio* by the judge *ad boni viri arbitrium*.²

In certain cases, however, the convention is interpreted in the sense that *its existence and content* must depend absolutely on the decision of the designated third party in such a way that there may be neither modification nor completion by the judge, but only a demand for damages against the third party on account of fraud, or against the party who instigated the fraudulent conduct of the third party.³

It is certain that in such a case the decision of the *arbitrator* approaches, in its practical effect, an arbitral decision properly so called. Nevertheless, even then, the principle to be adhered to is that it is not a *dispute* which is *decided*, but an *incomplete convention* which is *completed*.⁴

It may be difficult to draw the line of demarcation in a particular case. It is less discernible and less clearly defined externally in the law of to-day than in the Roman law, where the

¹ Digest, *Pro socio*, 17, 2, 6 & 75-80; *Locati*, 19, 2, 24, pr.; *Qui satisdare cogantur*, 2, 8, 9 & 10, pr.; *De verborum obligationibus*, 45, 1, 43 & 44; Gaius III, 140-143.

² See, in addition to the texts cited, Digest, *De diversis regulis iuris*, 50, 17, 2, 1; *De iure dotium*, 23, 3, 69, 4; *De operis libertorum*, 38, 1, 30, pr.; Voet, *Comm. ad Pand.*, IV, 8, § 2; Glück, *Ausführl. Erläuterung der Pandekten*, VI, 66; André, *Gemeinrechtliche Grundzüge der Schiedsgerichte*, Jena, 1860, 38-43.

³ Digest, *De verborum obligationibus*, 45, 1, 43-44, and especially Code (*Corpus Iuris Civilis*), *De contrahenda emptione*, 4, 38, 15; cf. with Gaius, III, 140-143; Institutes (*Corpus Iuris Civilis*), *De emptione et venditione*, 3, 23, 1; *De locatione*, 3, 24, 1; Code Napoléon, 1592; Goldschmidt, *Manuel de Droit commercial*, I, 2, § 64, n. 68 et seq.

⁴ See the jurisprudence of the Supreme Court of Commerce of Leipzig, *Decisions*, III, pp. 74, 170; IV, p. 428; V, p. 123; VIII, p. 110.

penal clause was the rule in a genuine *compromis*. There is no doubt as to the principle itself of delimitation.¹

In treaties between States there will seldom be occasion for any doubt. It is evident that international conventions of this kind, where the intention is that an incomplete arrangement be completed by a third party, must regularly be interpreted in the sense of the absolutely obligatory force of the decision of the third party, since mitigation on the part of the judge is not even possible here.

The following rules concern only cases where States have agreed by treaty to submit to an arbitral decision.

They lay claim, and can lay claim, only to a subsidiary force. The convention concluded must be determinative in all respects.²

The greater the care and detail of this convention, the less occasion will there be for resorting to subsidiary rules, which must be considered merely as tacit elements of incomplete *compromis*. There can be no question of recognizing that they have any force as absolute rules against the *compromis*. The principle *jus publicum privatorum pactis mutari non potest* is not admitted and is not admissible in the matter of international treaties.

These rules are drawn in the first place from the practice—very limited in truth—of international law. In the second place, they are the result of *independent* deductions, in which we have taken into account legal principles accepted in the matter of arbitrations in various civilized countries. These principles can not be utilized *directly*, first, because there are considerable differences in the practices of different countries in this matter also; then, because an international *compromis* can not be subjected to all the principles of civil arbitration, but requires special rules; finally, because all direct constraint and all immediate control exercised by a tribunal superior to the arbitrators and to the parties must be left out of consideration.

This last fact furnishes the opponents of international tribunals with a specious objection, both those who wish to safeguard

¹ See, for example, Domat, *Droit public*, continuation of *Loix civiles dans leur ordre naturel*, Book II, pt. VII, sect. 1, § 3; Dalloz, *Répertoire*, under the word *Arbitrage*, ch. II, n. 49; *La Comision mixta de reclamaciones Mexicanas*, p. 24.

² Digest, *De receptis*, 4, 8, 32, 15: *Sciendum est omnem tractatum ex ipso compromisso sumendum*.

completely the liberty of States and those who extol the creation of a permanent international tribunal. It is labor lost, they say, to attempt to regulate legally an institution whose use depends upon the pleasure of the parties interested, whose existence and success are left to their uncontrolled arbitrary will, an institution, in short, which cannot be subjected either to a fixed law or to definite procedure. Those who talk thus do not take sufficiently into account the power of international custom and of public opinion. They do not see that it is in fact more difficult to refuse to comply with an arbitral award than to withdraw from a position taken unilaterally and not determined by a third party, to all appearances impartial. Finally, they lose sight of the fact that it is possible, even in an international suit, to contest successfully the award rendered.¹

It is to be noted that the rules of Roman law, particularly of the classic law, are more in keeping with the nature of international arbitration than the legal principles governing civil arbitration. In the classic Roman law the *compromis* and the arbitral award established between the parties a purely conventional right. The contravening party is liable only to a demand for payment of the conventional penalty or of damages. No direct constraint is possible, neither is any direct recourse. The idea that the arbitrator renders in a way judgment in first instance is foreign to the great jurists of Rome. The result of this is that in the regulation of international arbitration it is possible on many important points to follow to better advantage the Roman law than modern laws of procedure. Moreover, the Roman law forms the foundation of most of the codes of civil procedure, and it enjoys in the field of Anglo-American law also the high authority of a *written reason*.²

The principles to be laid down concern:

1. The conclusion of *compromis*;
2. The formation of the arbitral tribunal;
3. The procedure before this tribunal;
4. The arbitral award;
5. Appeal from the award.

¹ See below, § 32 *et seq.*

² See, for example, Phillimore, *Commentaries*, III, pp. 3-5.

Draft

SECTION 1. The international arbitral tribunal decides legal questions between two or more States.

See preliminary remarks.

Draft

SECTION 2. An international arbitral tribunal presupposes:

1. A valid international *compromis* (*compromissum*).
2. A valid convention between the makers of the *compromis*, on the one hand, and the arbitrator, on the other, a convention in which the latter undertakes to decide the dispute (*receptum arbitri*). If the arbitral tribunal is to be composed of two or more persons, there must be a valid convention between the makers of the *compromis*, on the one hand, and each of the arbitrators on the other (Section 9).

These two constituent elements, *compromissum* and *receptum arbitri*, are the subject of no doubt. They must be distinguished, as they are in Roman law. Each of them is governed by special rules.

Draft

SECTION 3. The *compromis* is concluded:

1. *In advance*, either for all differences or for differences of a certain kind, to be determined, that may arise between the contracting States. The *compromis* is concluded in this case by a valid international treaty.

2. For one difference, or several differences, *already arisen* between the contracting States, by an act signed by the representatives of the States making the *compromis*.

SECTION 4. In case the *compromis* is concluded in advance for future differences, the competence of the arbitral tribunal extends to all the differences mentioned in the *compromis*, in so far as this competence is not restricted by a subsequent convention between the makers of the *compromis*.

If the agreement is concluded for a difference already existing between the contracting parties, this difference must be clearly specified in the *compromis* or in a subsequent complementary convention. If the difference is not sufficiently specified, the *compromis* is null.

Differences arising after the conclusion of the *compromis* shall not be brought before the arbitral tribunal.

SECTIONS 3 and 4 are intended to settle the controversy on the following question: Aside from an independent *compromis* properly so called, should a more or less general convention to arbitrate future differences (*pactum de compromittendo*, *compromis* clause) also have the effect of a valid convention? The Roman law says yes, provided the legal situation from which the future difference may arise be clearly specified.¹

Recent German codes of procedure do not go beyond this—for example, the Bavarian Code, Article 1319, and the German Draft of 1872, Section 780. The conception, according to which it is possible legally to conclude *in advance* a *compromis* covering all differences whatsoever,² is not well founded either in the jurisprudence or in the sources of the common law. The recent jurisprudence of the French Court of Cassation interprets Article 1106 of the code of procedure more strictly still.³ And Anglo-American law does not recognize the legal effect of any *compromis* except those concluded with respect to differences already arisen.⁴

Nevertheless we do not hesitate to give to *international compromis* clauses the *most general* force, and consequently to recognize also those bearing upon *all future differences*. On the other hand, the serious and deliberate will to bind themselves may never be questioned in conventions between States. And if, on the other hand, the *compromis* clause considerably restricts the liberty of States, it is not at the expense of the regular courts, but in order to supply a deficiency in them. The international *compromis* clause must, therefore, be favored.

It is clear, however, that if no method were indicated for forming the arbitral tribunal against the will of either of the parties, the clause would be ineffective *for this reason*.⁵

What other material and formal conditions will be required to make an international arbitral *compromis* valid? This is a complex question: it is partly international, partly subject to the public law of each contracting State. With respect to the first, it is

¹ Digest, *De receptis*, 4, 8, 21, 6; 4, 8, 43; 4, 8, 32, 15.

² See, for example, Windscheid, *Lehrbuch der Pandecten*, II, § 416, *ad fin.* Cf. André, p. 26 *et seq.*

³ Dalloz, under the word *Arbitrage*, ch. VII, no. 431 *et seq.*

⁴ Bouvier, *A Law Dictionary*, 14th ed., 1870, II, under the word *Submission*, no. 6.

⁵ See below, § 5.

sufficient to refer to the general principles of international law pertaining to the conditions required to make treaties valid.¹ With respect to the second, it will be necessary to consider in particular to what extent the authorized agents of the contracting States require the consent of the national representative bodies of their States either to conclude the *compromis*² or to appoint the arbitrators.³

The requirement of an *authentic* document establishing the *compromis* is in keeping with the importance of the subject and the usages of international law.

The rules of Section 4 proceed directly from the nature of the *compromis*. They are universally recognized.⁴

It is for the arbitral tribunal to decide by interpretation what differences are included under the general designation, as, for example, *Alabama Claims*.⁵

Draft

SECTION 5. The valid *compromis* gives to each contracting party the right of appealing to the arbitral tribunal that it designates for the decision of the dispute. In the absence of a personal designation of the arbitrator or arbitrators in the *compromis*, the course to be followed in the formation of the arbitral tribunal is determined according to the provisions laid down by the *compromis* or by another convention (see Section 6). In the absence of provisions, each of the contracting parties has the right to choose an arbitrator on his own part. If the arbitrators chosen cannot agree upon the award, they may, in so far as they have been empowered by the contracting parties, choose an umpire. Ratification, either express or tacit, of the choice made by the arbitrators is equivalent to authorization.

In the absence of authorization, the contracting parties must agree upon the choice of an umpire or upon a third person who shall select the umpire.

If the parties can not agree, or if the person designated refuses to make the selection, or if one of the parties refuses

¹ Heffter, *Droit international*, § 81 *et seq.*; Calvo, § 548 *et seq.*

² Ernst Meyer, *Ueber den Abschluss von Staatsverträgen*, Leipzig, 1874.

³ Pierantoni, *Gli arbitrati internazionali*, pp. 8, 9.

⁴ Digest, *De receptis*, 4, 8, 21, 6; 4, 8, 32, 15 & 21; 4, 8, 46; Canon Law, Dec., Greg. IX, *De arbitris*, I, 43, 3; *Code de procédure*, Article 1006; Dalloz, *loc. cit.*, ch. VII, no. 460 *et seq.*; Bavarian Code of Procedure, Article 1319; Bouvier, I, under the word *Award*, no. 1. *La Comision mixta*, pp. 20-22, 23. ⁵ See § 18.

the coöperation that it owes under the *compromis* for the formation of the arbitral tribunal, the *compromis* becomes of no effect.

SECTION 6. If at the outset or because they have been unable to come to an agreement upon the choice of the arbitrators the contracting parties have agreed that the arbitral tribunal shall be formed by a third person designated by them, and if the designated person takes upon himself the formation of the arbitral tribunal, the steps to be followed to this end shall, in the first instance, be in accordance with the provisions of the *compromis*. In the absence of provisions, the designated third person proposes nine persons at least. Each party may reject three of these, and, if more than three remain on the list, the third person selects three by lot.

If one of the parties refuses its coöperation, the three persons whom it has the right to eliminate are eliminated by the third person by lot.

The Roman law strictly observes the principle that the arbitrator must be a judge, *chosen* by the *two* parties, and it deduces all the consequences that proceed therefrom. Individual designation of the arbitrators in the *compromis* is therefore essential; at most an alternative designation is authorized.¹ It is not even permitted to entrust the selection of the umpire to the arbitrators. But the magistrate has the right to appoint one if the arbitrators are unable to come to an agreement.²

Modern practice sometimes goes beyond these narrow limits. It is deemed sufficient, if, when there is no designation of arbitrators in the *compromis*, their selection is not left to the parties themselves. Arbitrators are permitted to appoint the umpire. Even a *compromis* clause simply to the effect that each contracting party shall appoint an arbitrator is considered valid, and the judge makes the appointment in case of refusal. This, however, is contested both in German common law and in French law. The supreme courts generally sanction stricter principles.³

¹ Digest, *De receptis*, 4, 8, 32, 3; 4, 8, 17, 4.

² *Idem*, 4, 8, 17, 5-6.

³ Voet, *Comm. ad Pand.*, IV, 8, § 13; Glück, *loc. cit.*, p. 85; André, *loc. cit.*, pp. 26 *et seq.*; Windscheid, *loc. cit.*; *Code de procédure*, 1006, 1012, 1017; Dalloz, *loc. cit.*, ch. VII, no. 454, 485 *et seq.*, ch. VIII, no. 742; Bavarian Code of Civil Procedure, 1319, 1325-1327; German draft of Code of Civil Procedure, pp. 782, 783-787; Bouvier, under the word *Arbitrator*, § 2.

It is clear that the practice in civil procedure can not be followed absolutely in international law.

In the first place, there can be no question of the appointment of arbitrators or of an umpire by the ordinary judge—an appointment which would seem to be better suited to a *forced arbitration* than to a voluntary *compromis*.

Neither can it be absolutely assumed that a *compromis* bearing upon two specific persons will also give power to appoint an umpire in case of disagreement. For the coöperation of two arbitrators offers a better guaranty than a decision of a majority of two out of three, and it is not certain that the umpire chosen will have the confidence of one or the other of the parties, and still less likely that he will have the confidence of both.¹

Very remarkable provisions are found in the international *compromis* recently concluded by the United States of America. According to the treaty concluded with the Republic of Venezuela (1866), the two arbitrators chosen by the parties choose the umpire. If they do not come to an agreement, the choice is made by the representative of Switzerland or of Russia at Washington. According to the treaty concluded with Mexico in 1868, the two arbitrators chosen by the parties appoint the umpire. If they do not reach an agreement, each of them names one, and in each case to be heard it is decided by lot which of the two umpires shall act. Finally, the Treaty of Washington constantly follows the rule that of several—three, four, or five—arbitrators, two are appointed by the parties, and the third, fourth, or fifth is, or are, appointed, in the first instance, either by the parties by common agreement, or eventually by the head of a neutral State.²

This last provision contains an idea that is new and fruitful. There is nothing to prevent the selection of the entire tribunal, just as well as the selection of an umpire, whether it is composed of one or of several persons, from being entrusted, in the first instance, to an impartial third person. The designation made by such a third person capable of forming the arbitral tribunal, in-

¹ See Domat, *Droit public*, Book II, pt. VII, § 2; Heffter, § 109; Calvo, I, § 667 (p. 791); Phillimore, III, p. 4; Bulmerincq, *loc. cit.*, p. 416; Berner, in the *Staatswörterbuch* of Bluntschli and Brater, VI, p. 193. To the opposite effect, see Bluntschli, *Droit international*, p. 492.

² Articles 1, 10, 12, 23.

dependently of the wills of the parties, according to rules elsewhere agreed upon or determined, must suffice to make the *compromis* valid.¹

It seems to be proper, under these conditions, to proceed by list, as has been done in similar cases, for example, in Pennsylvania, and according to the Constitution of the United States.²

Such are the considerations upon which Sections 5 and 6 are based.

We shall add two remarks.

If the *compromis* designates a foreign State or its head, a municipality or other secular or ecclesiastical corporation, a civil or ecclesiastical authority, a law faculty, a learned society, or the actual head of a municipality, corporation, etc., this constitutes an *individual designation of an arbitrator*. The corporation, as a whole, or the academy, etc., is considered as *one* arbitrator. The course which it is to follow in pronouncing judgment is laid down by the principles governing its resolutions in general. It will be proper, however, to draw up special regulations with a view to such eventualities. This concerns especially the Institute of International Law, if it should some day be designated as an arbitrator.

The same thing would be true if, instead of the duties of an arbitrator, the selection of one or more arbitrators or of an umpire, or the formation of a complete arbitral tribunal were entrusted to a State. If such a duty were committed to the Institute, it would be well to elaborate regulations capable of giving the parties desirable guaranties of conscience, of competence, and of impartiality.

Draft

SECTION 7. The following are incapable of performing the duties of an arbitrator:

Persons less than fourteen years of age.

Persons in a state of insanity.

The following may be challenged:

1. Persons less than twenty-one years of age.

2. Persons of the female sex.

3. Dumb, deaf, or deaf and dumb persons.

4. Persons who, according to the law of the country to which they belong, are deprived of their civil rights.

¹ See Dalloz, ch. VIII, nos. 798-799.

² Field, *Outlines*, Article 530; Bouvier, under the word *Arbitration*, p. 3.

5. Persons who are personally and directly interested in the outcome of the dispute.

6. Subjects of either of the contending States.

None of these grounds for challenging may be invoked by the party, who, in spite of the fact that the existence of the grounds was known to him, chose the person in question, or who fails to notify to the adverse party, within a period of thirty days from the time that he learned of the grounds, the fact that he challenges the arbitrator.

It is a matter of indifference whether the choice was made by one party only or by the two in common, or by a third person. The appointment of an umpire by the arbitrators selected is on the same footing as a selection made by a third party.

SECTION 8. If the parties have legally agreed on arbitrators individually determined, the incapacity of or a valid exception to even a single one of these arbitrators voids the entire *compromis*, unless the parties can come to an accord upon another competent arbitrator.

If the *compromis* does not carry an individual determination of the arbitrator in question, it is necessary, in case of incapacity or valid exception, to follow the course prescribed for the original choice (Sections 5 and 6).

In civil codes and in codes of civil procedure the reasons for incapacity or challenge are either not determined or determined in very different ways. The doctrine and practice likewise are divergent.¹

It goes without saying that insane persons and minors must be absolutely excluded. Other persons, from whom it does not appear that an entirely judicious, reasoned, and impartial decision can be expected, *may* be challenged by either of the parties, but this is not obligatory.²

This enumeration of the grounds for challenging is restrictive. It is beyond doubt sufficient. Many codes of procedure contain the provision that the grounds for challenging judges should also be grounds for challenging arbitrators. This is a good idea, but it could not be applied in international law, if only because of the divergency of national laws. When sovereigns who are minors or of the female sex are chosen, it will be in full knowledge of the

¹ See, for example, Dalloz, ch. VI, VII.

² Digest, *De receptis*, 4, 8, 6-7 & 9, pr. & § 1; *De re iudicata*, 42, 1, 57.

facts and, even if it were not, it would still be difficult to challenge them. Hence there is no occasion to consider the question that in international law heads of States are reputed capable of rendering an arbitral decision, whatever their sex and age.¹

The natural difference between arbitrators designated individually by the *compromis* and those chosen afterwards is clearly shown in the consequences of incapacity and of challenging (Section 8).²

Draft

SECTION 9. No one is compelled to accept the office of arbitrator.

The declaration of acceptance is made in writing and must, if so prescribed by the *compromis*, contain assurance of a just and impartial decision. It is sufficient to declare acceptance to one of the parties.

The fact of assuming the duties of arbitrator may take the place of a written declaration.

SECTION 10. An arbitrator who, after having accepted, either by a written declaration or by the fact of assuming the duties, withdraws without the consent of the makers of the *compromis* and without just cause, or who fails in some other way to fulfil the obligation he has assumed, may be prosecuted through legal channels, before the regular competent judge by either of the parties, upon payment of an amount equivalent to the expense incurred.

The provisions of Section 9 are in conformity with the usages of international law. See also our remarks on Section 3, and Book 3, Section 1, *De receptis*, 4, 8. In Roman law there was direct constraint by means of fines imposed by the magistrate to force execution of the *receptum*. Modern law has renounced this. It goes without saying that there could be no question of this where international arbitrators are concerned.³ It is true that in 1654 the makers of a *compromis* provided for the eventuality of constraint.⁴ However, it seems to be proper to oblige an arbitrator

¹ Canon Law, Dec. Greg. IX, *De arbitris*, I, 43, 4.

² See *Code de procédure*, 1012; Bavarian Code of Procedure, 1331; German draft, § 785.

³ Domat, *Droit public*, Book II, pt. VII, § 2; Bouvier, under the word *Arbitrator*, no. 4; Phillimore, III, p. 4.

⁴ Voet, *Comm.*, IV, 8, § 14.

who withdraws for slight reasons to pay an indemnity, the more so since considerable interests may easily be compromised by his act. In this respect the Roman idea is perfectly correct.¹ It is for the judge to decide whether the arbitrator has just grounds for withdrawing.²

Draft

SECTION 11. If an arbitrator refuses the arbitral duties, or if he withdraws after having accepted them, or if he dies, or if he becomes insane, or if he is legally challenged on any of the grounds mentioned in Section 7, the provisions of Section 8 are to be applied.³

International *compromis* frequently contain provisions in this sense.⁴ The arbitrators remaining may be granted the right to complete their number by coöptation.⁵

Draft

SECTION 12. If the seat of the arbitral tribunal is not mentioned in the *compromis* or in a subsequent convention between the parties, its determination is made by the arbitrator or by a majority of the arbitrators.

The arbitral tribunal is authorized to change its seat only in case the accomplishment of its functions at the place agreed upon is impossible or clearly dangerous.

The seat of the arbitral tribunal is important from the standpoint of the possibility of an arbitral decision that is impartial and, above all, free from any outside influence. Therefore, it is regularly determined in the *compromis* or in a subsequent convention between the parties.⁶

The importance of the seat of the arbitral tribunal is increased

¹ Digest, *De receptis*, 4, 8, 3, 1; 4, 8, 15; 4, 8, 32, 12; Bavarian Code of Procedure, 1323.

² See also Dalloz, ch. VII, nos. 621 *et seq.*

³ See remarks on § 8; Digest, *De receptis*, 4, 8, 9, 3; 4, 8, 32, 14; Voet, *Comm.*, h. t., § 21; *Code de procédure*, 1008, 1012, 1014; Dalloz, ch. VII, nos. 578 *et seq.*, 642 *et seq.*, 676 *et seq.*; Bavarian Code of Procedure, 1331; German draft, §§ 785, 787.

⁴ Treaty of Washington, Articles 1, 10, 12, 23; Treaties between the United States and Spain, Article 1; United States and Mexico, Article 1; United States and Venezuela, Article 1.

⁵ See D. D. Field, *Outlines*, § 535.

⁶ Treaty of Washington, Article 2 (Geneva), Article 10 (Washington, Boston, or New York, alternatively), Article 12 (Washington; but the convention of Jan. 18, 1873, gives the arbitrator free choice), Article 23 (Halifax).

by what is said further on regarding appeal from the award (Section 33).

The Roman law prescribed observance of the provisions of the *compromis* relating to the seat of the arbitral tribunal.¹ It is, however, just to make an exception in cases of absence caused by *force majeure*, serious epidemics, etc.

Draft

SECTION 13. The arbitral tribunal may appoint one of its members president and select one or more secretaries.

The arbitral tribunal decides in what language or languages its deliberations and the arguments of the parties shall take place, and the documents and other instruments of proof shall be presented. It keeps a record of its deliberations.²

SECTION 14. All members shall be present at the deliberations of the arbitral tribunal. The tribunal may nevertheless delegate to one or several members, or even commit to third persons, the drawing up of a protocol.

If the arbitrator is a State or its head, a municipal or other corporation, an authority, a faculty of law, a learned society, or the actual president of the municipal or other corporation, or authority, faculty, or company, all the arguments may take place before the commissioner named *ad hoc* by the arbitrator. A protocol thereof shall be drawn up.

SECTION 15. No arbitrator is authorized to name a substitute.

If there is a substitution with the consent of the parties making the *compromis*, the substitute assumes absolutely the place of the original arbitrator.

The principles of Sections 14 and 15 proceed from the very nature of the *compromis* and of the acceptance.

Only duly installed arbitrators may pronounce judgment.³

The option that continuous custom has accorded to the heads of States⁴ to have the award made by a court of their State or by commissioners is an unavoidable drawback; but, legally speak-

¹ Digest, *De receptis*, 4, 8, 21, 10.

² See, for example, Treaty of Washington, Articles 9, 16, 25; Treaty with Mexico, Article 6.

³ Digest, *De receptis*, 4, 8, 45: "*In compromissis arbitrium personae insertum personam non egreditur.*" Cf. 4, 8, 32, §§ 16, 17; Canon Law, Dec. Greg. IX, *De arbitris*, I, 43, 13; Bouvier, under the word *Arbitrator*, § 4.

⁴ Calvo, I, p. 791; Bluntschli, § 489.

ing, it is not an exception to the rule, inasmuch as in law the award of the court or of the commissioner is rendered as the award of the head of the State in whose name it is pronounced.

It is necessary also strictly to observe the rule that the parties have counted upon, and have the right to count upon, the continuous coöperation of all the arbitrators. The absence of one of them prevents a valid deliberation and decision, even though the others should agree and should form a majority. In effect, the absent member, by expounding his opinion, might have modified that of the others.¹ If such is not the intention of the parties, they may insert an alternative clause in their *compromis: ille aut ille*, a thing, however, that does not frequently occur.² It is true that the canon law allows arbitrators to deliberate and decide among themselves, in the absence of one of their number legally convoked.³ It is true, furthermore, that Voet⁴ approves this provision, and that Phillimore is of the same opinion. But this provision has not been accepted in European practice, which, on the contrary, very properly maintains the provisions of the Roman law.⁵ If, therefore, it is not possible to have a deliberation and decision of the complete tribunal, the absent arbitrator is considered as having withdrawn after acceptance, and Sections 11 and 8 are to be applied.

But representation by commissions should suffice for the drawing up of the protocol and, in the case provided for in Section 14, paragraph 2, for all the arguments and deliberations.⁶ The practice is similar when the arbitrator is a sovereign.⁷

Draft

SECTION 16. If the *compromis* or a subsequent convention between the parties prescribes the procedure to be followed by the arbitral tribunal or the observance of a de-

¹ Digest, *De receptis*, 4, 8, 17, 2 & 7; 4, 8, 18; 4, 8, 32, 13.

² *Idem*, 4, 8, 8; 4, 8, 17, 4; 4, 8, 32, 13.

³ Canon Law, Lib. VI Dec., *De arbitris*, I, 22, 2.

⁴ *Comm. ad Pand.*, L, 1, § 16.

⁵ Domat, *Les lois civiles dans leur ordre naturel*, Book I, pt. XIV, sect. II, § 5; Glück, VI, 80; *Code de procédure*, Articles 1011-1012; Dalloz, ch. VII, nos. 611-613; Draft of the Code of German Procedure, § 787; Bouvier, under the word *Arbitrator*, no. 3. See also Heffter, § 109; Bluntschli, § 491.

⁶ See the remarks on § 6.

⁷ Treaty of Washington, Article 39.

terminated and positive law of procedure, the arbitral tribunal must conform to that provision. In the absence of such a provision, the procedure to be followed shall be freely chosen by the arbitral tribunal, which is bound to conform only to the principles that it has declared to the parties that it desires to follow. In all cases it must hear each party and require the furnishing of the proofs necessary for the elucidation of disputed points which are to be taken into consideration. The direction of the arguments belongs to the arbitral tribunal or to its president.

This is in conformity with the general principles.¹ The divergent rule of the canon law² and of certain modern laws, particularly of the French Code of Procedure, Article 1009, and of the Bavarian Code of Procedure, Article 1332, which prescribes that the arbitral tribunal shall conform to the procedure of the country in which it is constituted, must be rejected in general and especially in international arbitration. In the Middle Ages arbitrators were generally not required to observe laws of procedure.³ The question is not a disputed one to-day.⁴

At times the *compromis* prescribes certain fundamental principles, and lately regulations for the arbitral tribunal have also been inserted.⁵

It goes without saying that the procedure will be more detailed or more summary according to the circumstances of the case. It is not possible to lay down general rules.

Draft

SECTION 17. Each of the parties shall appoint a representative at the seat of the court.

¹ See Domat, *Loix civiles*, Book I, pt. XIV, sect. I, § 2; André, *loc. cit.*, §§ 57, 58; German draft, § 788; Bouvier, under the word *Arbitrator*, no. 3.

² Canon Law, Dec. Greg. IX, *De arbitris*, I, 43, 2.

³ See, for example, the *compromis* of 1298 between Philip the Fair and Edward I; Struve, *Jurisprudentia heroïca*, ch. I, § LXXXVI.

⁴ Pufendorf, V, 13, §§ 8, 9; von Neumann, *De processu judicario in causis principum comment.*, § 20; Pierantoni, *Gli arbitrati internazionali*, pp. 90-94; *La comisione mixta*, p. 23; Treaty of Washington, Article 10: "Under such rules and regulations as they may prescribe"; Article 13: "In such order and in such manner as they may think proper."

⁵ Treaty of Washington, Articles 3, 5, 10, 13, 14, 36, 37; Treaty with Chile, 1858; with Venezuela, Article 2; with Mexico, Articles 2, 3 (together with the Regulations of the Commission of August 10 and December 23, 1869, and subsequent decisions); with Spain, Article 4 (Regulations of the Commission of July 1, 1873).

This goes without saying. Nevertheless, if the dispute is of little importance, some other suitable arrangement may suffice.¹

Draft

SECTION 18. The arbitral tribunal is the judge as to its competence. If exception to its competence is not taken at the first opportune moment, or if an exception, taken in sufficient time, has been rejected by the arbitral tribunal, and the parties proceed, without making reservations, any further contest as to its competence is excluded.

This is disputed, though wrongly, in civil arbitration.² The correct opinion is substantially upheld by the Supreme Court of Commerce of Leipzig against the Supreme Court of Berlin.³ The danger of excess of competence does not warrant preliminary intervention by the official tribunal.

In international arbitration there is the further reason that a preliminary procedure is impossible. The entire operation of the arbitral court could then be paralyzed by an exception taken to its competence. It goes without saying that the way must be open for appeal on the grounds of excess of competence. It remains to be seen whether the arbitral tribunal would be authorized to refuse to make a decision on the grounds that a question of incompetence had been raised. In the present state of the system of appeal, there are determinative reasons for the negative.⁴

Mr. Rolin-Jaequemyns very justly remarks that the question of competence should not be considered by a strict interpretation of the *compromis*, but that in case of doubt it should be decided in the affirmative. In effect, this deciding the question in the affirmative is not an infringement on the competence of a regular tribunal. On the contrary, it renders possible the judicial decision of a point which otherwise would remain in dispute. Anglo-Ameri-

¹ Treaty of Washington, Articles 2, 13, 23, 38.

² Dalloz, ch. X, nos. 984 *et seq.*

³ Decisions of the Supreme Court of Commerce, II, pp. 164, 199; IV, 142; VIII, 226; Draft of German Civil Procedure, § 791.

⁴ See §§ 32 *et seq.* See also Pierantoni, *Gli arbitrati internazionali*, pp. 98 *et seq.*; Pradier Fodéré, *La question de l'Alabama*, Paris, 1872; Rolin-Jaequemyns, *Revue de droit international*, IV, 136 *et seq.*; Bluntschli, § 492, a; *Treaties and Conventions*, notes, p. 965: "A mixed commission is competent to decide upon the extent of its jurisdiction." Cf. p. 1029, in particular no. 3; on the other side, see Holtzendorff's *Encyclopaedia, Rechtslexikon*, 2d ed., I, 969.

can jurisprudence recognizes, even in the matter of civil arbitration, the principle that "a fair and liberal construction is allowed in its interpretation."¹

Draft

SECTION 19. In the absence of provisions in the *compromis* to the contrary, the arbitral tribunal has the power:

1. To determine the forms and periods in which each party must, through its duly authorized representatives and assistants, present its conclusions, establish them in fact and in law, submit its instruments of proof to the tribunals, communicate them to the adverse party, produce the documents whose production the adverse party requires;

2. To hold as admitted the contentions of each party which are not clearly disputed by the adverse party, as well as the alleged contents of documents which the adverse party fails to produce without sufficient reasons;

3. To order new hearings, to require from each party explanation of doubtful points;

4. To issue orders of procedure (on the conduct of the case), to cause proofs to be furnished, and, if necessary, to call upon the competent tribunal for judicial acts for which the arbitral tribunal is not qualified, particularly sworn testimony of experts and witnesses;

5. To decide with free-will in the interpretation of the documents produced, and generally in passing upon the instruments of proof presented by the parties.

These principles are optional. It appears to be desirable to admit them in the subsidiary regulations as appropriate instructions for the arbitrators.²

Draft

SECTION 20. Each of the parties is free to bring into the case other States, municipalities, corporations, and individuals, either in support of its contentions or because, if occasion arises, it desires to be able to appeal against them. If the intervention of a State, municipality, etc., is in com-

¹ Bouvier, under the word *Submission*, no. 7.

² See Digest, *De receptis*, 4, 8, 27, pr.; 4, 8, 39; 4, 8, 32, 18-19; 4, 8, 49, 1; Pufendorf, V, 13, §§ 8-9; Bluntschli, § 491; Draft of German Procedure, §§ 788-790; Bavarian Code of Procedure, 1333. For the production of documents (1), see also the Treaty of Washington, Articles 4, 24, 37, and the treaty with Venezuela, Article 2. On the principle that only the means of proof produced are taken into consideration (5), see Treaty of Washington, Articles 5, 13; Treaty with Mexico, Article 2.

pliance with a citation emanating from the arbitral tribunal, it, as well as the parties, must be heard on what it advances. Voluntary intervention is not admissible.

These provisions are to be commended in the interest of getting at the truth and to obviate disputes in the matter of guaranties.

Draft

SECTION 21. Counterclaims cannot be brought before the tribunal except so far as permitted by the *compromis*, or except when the two parties and the tribunal are in accord in admitting them.

This follows directly from the conventional limitation of competence.¹

Draft

SECTION 22. Unless the arbitral tribunal is permitted, either by the *compromis* or by a subsequent convention of the contracting parties, to decide simply according to its equitable judgment, or unless, on the contrary, it is prescribed that it decide according to definite rules agreed upon, the legal judgment of the facts of the case will be rendered in conformity with the principles of law which are applicable by virtue of the rules of international law.

There was considerable agitation of the question whether the arbitral tribunal should decide according to law or according to equity. In the first place, it is necessary to come to an agreement as to the real extent of the opposition thus formulated. If there exist in a State two systems of positive legal rules, a system of *strict law* and a more liberal system of *equity*, then it is natural that the arbitrator should apply equity in so far as it can suffice. Hence the Anglo-American principle that the arbitrator is authorized, in case of doubt, to judge *ex aequo et bono*.² Where, on the contrary, this double system of positive law does not exist—and such is at present the case in all the countries of the European continent—the only question that can be raised is whether the arbitrator should apply the existing law, whether this law appear equitable or not, or whether, discarding *all positive legal rules*, he

¹ Digest, *De receptis*, 4, 8, 21, 6; Canon Law, Dec. Greg. IX, *De arbitris*, I, 43, 6; Dalloz, ch. VII, no. 469; on the other side, von Neumann, *loc. cit.*, § 19.

² Bouvier, under the word *Arbitrator*, no. 3.

should, as it were, *find the law suited* to the given case, or even create between the parties, and in their place and stead, a new and appropriate legal status.¹ But there can be no doubt that such latitude could not be admitted. Therefore, all the countries of our continent are in accord in recognizing that the arbitrator is bound, in his capacity as such, to decide according to positive law, which, however, he may, just as the official judge, apply equitably.²

But the *compromis* may provide to the contrary,³ and it is quite possible also that certain fixed principles may be prescribed for the arbitrator, to serve as rules for his decision.⁴ Such a prescription does not constitute an infringement on the absolute principle "that the *decision he must render* may not be dictated to the arbitrator."⁵ In effect, it does not in any way contain the decision of the dispute.

Therefore, as a general rule, the arbitrator will decide according to the principles of existing international law. He will apply to the *international* points in dispute the *international* law existing between the parties by virtue of treaties or custom; in the second place, general international law; to disputed points of another kind, in the matter of public or private law, the national law which appears to be applicable according to the principles of international law: English, French, Italian, German law, etc.⁶

Draft

SECTION 23. The arbitral tribunal cannot refuse to give judgment under the pretext that it is not sufficiently informed either on the facts or on the legal principles that should be applied.

It must decide definitively each of the points in controversy. Nevertheless, if the *compromis* does not provide for

¹ See the preliminary remarks.

² See, for example, *Code de procédure*, Article 1019; Dalloz, ch. X, especially nos. 1019 *et seq.* Such also is the opinion of the principal writers on international law; Grotius, III, 20, 47; Pufendorf, V, 13, § 5; von Neumann, § 5; von Martens, *Précis*, § 176: "Award drawn from the principles of law."

³ For example, treaty between the United States and Chile, 1858: "The King of the Belgians shall decide *ex aequo et bono*."

⁴ Example: The three rules of Article 6 of the Treaty of Washington.

⁵ Digest, *De receptis*, 4, 8, 17, 3; 4, 8, 19, pr.

⁶ See *Comision mixta*, pp. 23-24. On page 21, equity (*la equidad*) is treated as one of the bases of the decision. This is perfectly correct, since positive law must be interpreted and applied equitably.

a simultaneous definitive decision of all the points, the tribunal may, while deciding definitively certain points, reserve the others for a later proceeding.¹

SECTION 24. The delivery of the final decision must take place within the time fixed by the *compromis* or by a subsequent convention. In the absence of other determination, the period of two years is considered as agreed upon, beginning from the day of the conclusion of the *compromis*. The day of conclusion is not included therein, nor is the time during which the arbitral tribunal may have been prevented by violence on the part of one of the parties or by a third State from discharging its duties.

The laws insist upon the obligation to observe rigorously the agreed upon or legal period. (The latter is three months in French law.) It goes without saying that it may be extended. This right is expressly mentioned in various international treaties; for example, in the *compromis* between the United States and Mexico. It appears to be appropriate to have this period run from the day of the conclusion of the *compromis*. However, there are divergencies in the civil laws. A great variety of periods is found; for example, in the Treaty of Washington, Articles 7, 14, 24, and in the treaty with Venezuela, Articles 4 and 5. It appears to be proper also to extend this period in case the attendance of members of the tribunal, even of a single one of the arbitrators, is prevented by force.

Draft

SECTION 25. Every final or provisional decision shall be made by a majority of all the arbitrators.

The deliberation and decision must take place in common, even in case of a subsequent valid appointment of an umpire (Section 5). If one or more of the arbitrators refuse to take part, a decision, in which the umpire has by his participation brought about an absolute majority, is an arbitral award.

If, even with the participation of the umpire, there is not an absolute majority, the tribunal must advise the parties, and the *compromis* is void.

¹ *Code Napoléon*, 4; *Digest, De receptis*, 4, 8, 19, 1; 4, 8, 21 pr. & § 3; 4, 8, 25 pr. & § 1; 4, 8, 32, 16-17; 4, 8, 43; Bouvier, under the word *Award*, no. 2.

These are the general principles of civil arbitral tribunals.¹ The rule that a mere plurality is not sufficient, but that an absolute majority is necessary² and that this latter can not be obtained against the will of the arbitrators,³ must be observed. It must further be recognized, in case of doubt, that, if an agreement is not reached, the decision of the umpire does not constitute an arbitral award until it brings about an absolute majority. For even in case of disagreement, the umpire is not called in in the capacity of sole arbitrator. The contrary is not stated by law 17, Section 6, *De receptis*, 4, 8: "*Cujus auctoritate pareatur.*"⁴

Von Neumann holds the opposite opinion, which seems to prevail in English law and which is recognized in some recent treaties of the United States.⁵

It is superfluous to point out that the arbitral tribunal may, before rendering its award, submit *proposals of compromise* to the parties.⁶

By so doing it is not exceeding its competence, but it is acting outside of its functions, and it might thereby, in given circumstances, shake the confidence that the parties have in its impartiality and justice.

Draft

SECTION 26. If the arbitral tribunal finds that the contentions of neither of the parties are established, it must declare this, and if it is not limited in this respect by the *compromis*, it must lay down the real state of law.

This case may arise, especially in the matter of disputed boundaries. Each party claims a certain line, and the true line is perhaps between the two. In such a case, the arbitrator will act, barring stipulations to the contrary, as a real *arbiter finium*

¹ Digest, *De receptis*, 4, 8, 27, 3; 4, 8, 32, 13; Canon Law, Lib. VI Dec., *De arbitris*, I, 22, [2]; *Code de procédure*, Articles 1017, 1018, 1012; Dalloz, ch. VIII, ch. IX, no. 1084; Bouvier, under the word *Arbitrator*, no. 3; German draft, §§ 792, 787.

² On the other side, Pierantoni, p. 90.

³ See Treaty of Washington, Articles 2, 10, 12; treaty with Mexico, Article 2.

⁴ Dalloz, ch. VII, nos. 745, 850; Bluntschli, § 493.

⁵ Von Neumann, § 15; Stephen, *New Commentaries on the Laws of England*, 6th ed., London, 1868, § 374; Treaty with Mexico, Article 2; Treaty with Venezuela, Articles 2, 3, 5.

⁶ Bluntschli, § 492; Pierantoni, p. 90; Rolin-Jaequemyns, *Revue de droit international*, IV, 140.

regundorum. It would be otherwise, however, if he were called upon to decide merely as to the relative merits of the conflicting claims, as was the Emperor of Germany in the San Juan case.¹

Draft

SECTION 27. The arbitral award must be reduced to writing and signed by each of the members of the arbitral tribunal with his own hand. If the minority refuses to sign, the signature of the majority is sufficient, with the written declaration that the minority has refused to sign.²

SECTION 28. It is valid for the arbitral tribunal to add to the award a statement of its reasons. This statement is necessary only if the *compromis* so prescribes. The reasons must be signed in the same manner as the award (Section 27).³

SECTION 29. The award, with the reasons if stated, is notified to each party. The notification is effected by communication of a copy to the representative of each party or to an empowered agent of each party appointed *ad hoc*. Even if it has been communicated only to the representative or to the empowered agent of one party, the award can no longer be changed by the arbitral tribunal. The tribunal, however, has the right to correct mere errors in writing or reckoning, even when neither of the parties makes a motion to that effect, and to complete the award on undecided disputed points, on the motion of one party and after a hearing of the adverse party. An interpretation of the award as notified is not admissible, unless *both* parties request it.

The guiding principles in this matter are developed very precisely in the laws 19, Section 1, 21 pr., 25 pr. Section 1. *De receptis*, 4, 8. The right to change arbitrarily after notification can not be allowed, as Mr. Bulmerincq would like.⁴ We must take into consid-

¹ Treaty of Washington, Article 34: "Which of those claims is *most in accordance* with the true interpretation of the treaty of June 15, 1846." *American Law Review*, January, 1874, pp. 240 *et seq.*; Phillimore, III, p. 6, n. 1.

² *Code de procédure*, 1016; Bavarian Code of Procedure, Article 1336; German draft, § 793; Bouvier, under the word *Award*, no. 5; Treaty of Washington, Articles 7, 10, 13, 42.

³ Digest, *De receptis*, 4, 8, 19; Glück, VI, p. 91; Bouvier, under the word *Arbitrator*, p. 4. The French law prescribes a statement of reasons (see remarks on § 16); Dalloz, ch. XI, nos. 1051-1055. The German draft does likewise, but it is inconsistent, § 795, no. 55.

⁴ See the Encyclopaedia of von Holtzendorff, *Rechtslexikon*, under the word *Schiedsspruch*, II, p. 417.

eration the danger of a subsequent change under the pretext of interpretation.¹

Draft

SECTION 30. The award, when duly pronounced (Sections 24-29), decides, within the limits of its scope, the dispute between the parties.

The clause frequently inserted in the *compromis*, "that the parties bind themselves to comply with the award," or, "that they bind themselves to recognize the award as absolutely and unequivocally obligatory," is superfluous and of no effect legally. The direct effect of the arbitral award is generally recognized in modern law. Unless there be a convention to the contrary, none of the parties may refuse to comply, not even upon payment of a promised sum as a penalty.²

Draft

SECTION 31. The expenses of the arbitral proceedings are borne half and half by each party, without prejudice to the decision of the arbitral tribunal regarding the indemnity that one or the other of the parties may be condemned to pay.³

SECTION 32. The arbitral award, when duly pronounced, may be contested and annulled:

1. If the *compromis* was not legally concluded (Sections 2, 3, 4, 7, 8). This ground may not be invoked, if the appellant took part in the procedure before the arbitral tribunal and did not contend that the *compromis* was invalid.

2. If the *compromis*, although legally concluded, has subsequently been annulled:

(a) By convention of parties intervening before the award is pronounced;

(b) Because it has not been possible to form the arbitral tribunal or because a legally formed tribunal has subsequently been dissolved (Sections 5-8, 11, 25).

¹ Dalloz, ch. XI, nos. 1133 *et seq.*; Bouvier, under the word *Arbitrator*, no. 4; *La comision mixta*, p. 24. As to official copies of the award, see Treaty of Washington, Articles 7, 10, 35.

² See remarks on §§ 32 *et seq.*; Bluntschli, § 494. *Treaties and Conventions*, notes, p. 964: "The decision of an international tribunal within the scope of its authority, is conclusive and final, and is not reexaminable"; German draft, § 794.

³ Calvo, I, p. 796; Treaty of Washington, Articles 8, 25, 26, 41. See also Digest, *De receptis*, 4, 8, 39; Dalloz, ch. XI, no. 1061.

(c) Because the period stipulated for rendering the award has expired before the award is rendered (Section 24).

3. If the arbitral tribunal has not deliberated and reached its decision with all its members present and voting (Sections 14, 25).

4. If the *compromis* prescribes a statement of reasons and the award is rendered without reasons (Section 28).

5. If the arbitral tribunal has rendered its decision without hearing the appellant (Section 16).

On the same footing as the case of refusal to hear the appellant is that where the person who has acted as his representative has not been empowered by him, either expressly or tacitly, and where this person's action has not been ratified, either expressly or tacitly, by the appellant.

6. If the arbitral tribunal has gone beyond the limits of its competence as laid down in the *compromis* (Sections 3, 4, 18).

7. If the arbitral tribunal has, in its decision, granted the adverse party more than it demanded.

8. If the rules of procedure or the principles of law *expressly prescribed*, in the *compromis* or in a subsequent convention of the contracting parties, for the observance of the arbitral tribunal, or the principles of procedure established by the tribunal itself and notified to the parties have evidently been disregarded or violated.

9. If the arbitral award orders an act generally recognized as immoral and prohibited.

10. If, without the knowledge of the appellant and before the rendering of the award, one of the arbitrators has received from the adverse party a favor or the promise of a favor.

11. If it is proved that the arbitral tribunal has been deceived by the adverse party; for example, by means of forged or altered documents, or of suborned witnesses.

SECTION 33. Appeal must be taken before the tribunal or arbitral tribunal designated or appointed for this purpose in the *compromis* or in a subsequent convention between the parties. In the absence of such a designation or appointment, or if it is impossible legally to form the arbitral tribunal designated, or if the arbitral tribunal is legally formed and dissolved, or if the tribunal designated refuses to decide, the appeal must be taken before the supreme court of the State or territory in which the arbitral tribunal has held its sittings (Section 12).

SECTION 34. The appeal is taken within a period of

ninety days from the date of notification of the arbitral award to the empowered agent of the appellant (Section 29).

A written declaration that the arbitral award is unfair to the appellant, together with the deposit of the sum of one thousand francs as a penalty, is sufficient to enter an appeal. Upon the expiration of the period above mentioned, an appeal is not admissible unless the appellant proves that through no fault of his own he did not become aware until later of the grounds for his appeal.

The appeal is considered as abandoned and the penalty incurred, unless within a further period of ninety days, beginning with the date of expiration of the former period, a justificative memorandum, specifying and detailing the grounds on which the arbitral award is contested, is presented to the tribunal. The grounds set forth may not be completed upon the expiration of the period of justification.

Appeal may not be entered or justified except by duly authorized representatives.

The appeal and the justificative memorandum thereon must be communicated to the adverse party, who must reply in writing within a period of ninety days from the communication of the justificative memorandum. Facts stated in this memorandum, which are not clearly contested by the adverse party, are considered to be admitted.

The tribunal may hear the representatives of the parties and require the submission of proofs.

The tribunal passes judgment solely on the grounds for appeal as set forth in the justificative memorandum. If it finds them well founded, it annuls the arbitral judgment. If the arbitral award contains decisions, independent of each other, on several points in dispute, only the decisions which are effectively contested are annulled.

If the tribunal rejects the appeal, the penalty deposited is incurred.

The costs of these proceedings are borne by the losing party.

The decision of the tribunal is final.

The dispute can not, without the consent of the parties, be referred for further action to the arbitral tribunal that passed upon it or to any other.

We have pointed out in the preliminary remarks that the great jurists of Rome deduced from the nature of the *compromis* and of the arbitral judgment the just consequences, which modern juris-

prudence and practice have frequently altered. If the force of the arbitral award consists in the fact that *by virtue of the agreement of the parties it takes the place of a judicial decision*, it follows that it can be considered ineffective only in the following cases: when the parties have not consented; when there has not been a real arbitral tribunal; when the award has been rendered contrary to the express or tacit agreement of the parties; finally, when the maintenance of the award would appear to be an evident violation of all law and morality. The grounds for appeal in Section 32, 1-11, are therefore to be found in substance in the sources of the Roman law, particularly under Nos. 9, 10, 11.¹

More than that. The Roman law allows the arbitral award a direct effect only in exceptional cases. Justinian was the first to recognize that an award, expressly or tacitly accepted by both sides, has an effect similar to that of a judgment.² It follows that in Roman law appeal regularly takes the following form: payment of the sum promised in case of non-compliance with the award is refused, and the judge passes upon the merits of such refusal. But in no case is he authorized to examine the arbitral award, to ascertain its material correctness or justice.³ Also there is neither appeal from nor other process of law against arbitral awards.⁴

These very simple principles have been falsified in various ways by the jurisprudence and legislation of the Middle Ages. They were right in departing from the Roman law in recognizing that the arbitral award has a direct effect like that of a judgment. But they went further. They extended, so as to include arbitral awards, the system of appeals from judicial decisions. They allowed appeal, as if it were a question of a judgment rendered by judges of first instance, and that either absolutely, provided ap-

¹ Digest, *De receptis*, 4, 8, 3, pr.; 4, 8, 21, 7; 4, 8, 31; Code, *idem*, 2, 55(56), 3.

² Code, *De receptis*, 2, 55(56), 4-5. Cf. Digest, *De receptis*, 4, 8, 1-2; Paulus, *Receptae sententiae*, Lib. V, Tit. VA, § 1; Code, *De receptis*, 2, 55(56), 1; *De iurisdictione omnium iudicum*, 3, 13, 3.

³ Digest, *De receptis*, 4, 8, 27, 2: "*Stari autem debet sententiae arbitri, quam de ea re dixerit, sive aequa sive iniqua sit: et sibi imputet qui compromisit*," Digest, *Pro socio*, 17, 2, 76.

⁴ Code, *De receptis*, 2, 55(56), 1: "*Ex sententia arbitri ex compromisso iure perfecto aditi appellari non posse saepe rescriptum est*." It is only by way of comparison that the Digest, *De receptis*, 4, 8, 32, 14, speaks of "*quaedam appellandi species*."

peal were not expressly excluded by the *compromis*, or at least in so far as the *compromis* reserved the right of appeal. In addition, action to annul or a similar remedy was recognized for certain cases of flagrant illegality. And even in cases where appeal was prohibited, it was permitted for the purpose of contesting an award because of gross injustice, thus confusing the arbiter with the arbitrator.¹

It is only in recent years that German jurisprudence and laws of procedure (for example, those of Geneva, Bavaria, Germany) have returned to correct rules by excluding appeal in principle and restricting annulment.²

The facts which we have just pointed out were naturally calculated to influence the theory of *international* arbitration. As no method was seen here of obtaining a subsequent examination and a decision by the judge, it was bound to appear more equitable to refuse to recognize the force of an unjust award. There is a great divergence of opinions in this matter. The ancient masters excluded appeal or allowed it only on a few indisputably just grounds;³ but Daries in his *Observationes juris nationalis, socialis et gentium*,⁴ permits refusal to obey an unjust award. Vattel, II, 18, Section 329,⁵ is of the same opinion, at least in case of manifest injustice or absurdity. Likewise Neumann⁶ in case of "*dolus, illicita vel inhonesta praecepta, aliave nullitas admissa*." Many of the most recent writers admit these broad categories. They declare the award void: in case of fraud or evident partiality of the arbitrator, fraud on the part of the adverse party, incomplete hearing of the parties, a decision whose content could not legally give rise to a convention, material falsification, an error caused by the parties or the arbitrator, flagrant violation of the funda-

¹ See preliminary remarks. Cf., for example, Domat, *Droit public*, Book III, pt. VII, sect. 2, §§ *et seq.*; Voet, *Comm. ad Pand.*, IV, 8, §§ 23 *et seq.*; Glück, VI, 93 *et seq.*; André, *loc. cit.*, pp. 10-24, 47-56; Windscheid, *loc. cit.*, §§ 415, 416; *Code de procédure*, 1010, 1020 *et seq.*; Stephen, *loc. cit.*, III, pp. 373, 374, 377; Bouvier, under the word *Award*, nos. 3, 9, 10.

² See the draft of German procedure, §§ 795-797.

³ Grotius, III, 20, 46-48; Pufendorf, V, 13, § 4; Struve, § LXXXII.

⁴ Jena, 1751, vol. ii, *Observ.*, 13, §§ 13 *et seq.*

⁵ Vol. ii, p. 305, ed. of M. Pradier-Fodéré.

⁶ *Loc. cit.*, § 21.

mental principles of procedure, and, finally, in case of an award contrary to the dictates of international law and of humanity.¹

The first of the grounds for annulment given by Mr. Pierantoni is the "proved corruption of one of the arbiters, if it changes the judgment that otherwise would have been delivered." This is too restrictive. As a matter of fact, the influence that the corruption of even a single arbiter may exert is not ascertainable. The fourth ground pointed out by Mr. Pierantoni, after Messrs. Heffter and Calvo—"if the arbitral award has decreed something that is not fitted for being the subject of agreement"—is, on the other hand, a little too general, the more so since the systems of civil law vary on this point. We believe that the category under No. 9 of Section 32 is sufficient. It corresponds in substance to that formulated by Mr. Bluntschli in the following words: "incompatibility between the award and the dictates of international law or of the law of man."

It is necessary to specify and to limit as much as possible the causes of annulment, if we are to attempt to remove them from the embryonic state of scruples of conscience which can not be controlled, in which they now are, and to raise them to the plane of legal grounds, which permit the contesting of a judgment by regular process.

If this attempt succeeds, the force that the decision of international arbitral tribunals should claim to have as international judicial decisions will be guaranteed so far as the present state of international law admits. But to attain this end, the creation of a higher court is necessary.

It is to this higher court and the procedure which should be followed in it that Sections 33 and 34 refer. Doubtless it would be best to have an international tribunal either permanent or constituted *ad hoc* for the particular case. The objections that can be urged against an institution of this nature have no longer any great weight, since a material decision of the dispute is not asked for, but merely a judgment on the merits of the grounds, which

¹ Heffter, § 109; Bluntschli, § 495; R. von Mohl, *Encyclopädie der Staatswissenschaft*, 2d ed., § 450 (the strictest); Berner, in Bluntschli and Brater's *Staatswörterbuch*, VI, p. 103; Bulmerincq, *loc. cit.*, p. 417; Calvo, I, pp. 796, 797; Phillimore, III, p. 5; Twiss, *The Law of Nations, War*, § 5; Pierantoni, *Gli arbitrati internazionali*, pp. 91-97.

have been strictly defined, for contesting the award. If the parties are unable to agree upon the formation of such an international court or upon the formation of a new arbitral tribunal to be restricted to the question of appeal, or, finally, upon the selection to this end of some existing tribunal, there will then be no impropriety in entrusting the decision to the supreme court of the State or territory (for example, Italy) in which the arbitral tribunal has been sitting. The fact cannot be overlooked that the natural importance of the seat of the arbitral tribunal would thereby be considerably increased. But the parties are free to choose this seat at their pleasure, as likewise to entrust to another judicial court the decision in question. Perhaps it may be objected that all supreme courts are not fitted to decide international questions. We answer this objection, first, by the foregoing observation, and furthermore by the statement that the only question to be decided—to wit: whether the grounds formulated actually exist—will very seldom give occasion to take up questions of international law and of public law. Finally, it may be admitted without any hesitation that the general interests of nations in having correct international awards rendered will be sufficient to persuade the chosen or competent national tribunal not to refuse to undertake the decision requested.

It is not necessary to give in detail the reasons for the fundamental features of the procedure of appeal set forth in Section 34.

SUPPLEMENTARY OBSERVATIONS BY MR. GOLD-
SCHMIDT RELATIVE TO THE REGULATIONS
FOR INTERNATIONAL TRIBUNALS¹

The draft regulations for international arbitral tribunals, which last year formed the subject of the deliberations of the Institute, were the work of the reporter alone.

He considered it his duty to make his draft as precise and as complete as possible, in order to spare both the committee and the

¹ *Revue de droit international et de législation comparée*, vol. 7, p. 423.

Institute the trouble involved in the matter of details. He thought that the regulations would be the more useful in that they would contain legal principles clearly expressed and susceptible of direct application. Given this plan, the responsibility of which rests with the reporter, it was impossible not to develop the draft considerably. It was to be expected at the same time that the Institute would eliminate, without disadvantage, certain provisions somewhat theoretical in their scope, tacitly recognizing the principles on which they were based, and that many conceptions would be more briefly formulated.

In many a doubtful question it was the wish of the reporter to deviate as slightly as possible from the recognized law, leaving it for the Institute to take the initiative in the matter of the most important innovations.

The modified draft, in the form which it has assumed as a result of the deliberations of the Institute and of the drafting committee, is submitted, for final acceptance, at this year's meeting. The reporter recommends its acceptance. Nevertheless, not having been able to take part in the labors of the drafting committee, he deems it his duty to make a few remarks concerning various special points and certain questions of principle.

He desires to state in the first place that regulations intended for international debates may advantageously contain rules whose authority is undisputed according to the civil law or the procedure of certain States, indeed of a great number of States, for this fact alone is insufficient to make them applicable to international relations.

1. SECTION 4 of the original draft, governing the competence of the arbitral tribunal, has been stricken out, the grounds for appeal being enumerated further on. Article 24 of the present draft, which takes the place of Section 32 of the original draft, provides simply that the award is null *in case of excess of power*. But when is there excess of power? This is a question that may involve much doubt. It would be desirable to restore Section 4 in order to complete the said article, the more so since in the present Article 14 the principle laid down in the original Section 18—namely, that exception on the grounds of incompetence must be applied *in limine litis*—has been eliminated.

2. The present tenor of Article 18 appears to be too restrictive. The expression "law of nations," which the drafting committee has substituted for "principles of law which are applicable by virtue of the rules of international law" (Section 22 of the original draft), is not broad enough. It does not include all the provisions applicable to positive law. At any rate, the expression "principles of international law," as was proposed during the discussion, should be preferred. It is these principles, as a matter of fact, that establish which of several national laws should be applied in questions not governed by international law; for example, whether English or French public law, Spanish or German civil law.

3. The Institute has stricken out as superfluous Section 26 of the original draft. However, the question which was settled thereby is not beyond the possibility of dispute, as the reporter had an opportunity of discovering in his capacity as counselor to His Majesty the Emperor of Germany in the San Juan case. The restoration of the said article would therefore be justified.

4. SECTION 29 of the original draft has been adopted by the Institute with the following addition, proposed by Mr. Mancini, to paragraph 2: "provided the periods mentioned in the *compromis* have not expired." The omission of these words was doubtless an oversight on the part of the drafting committee.

5. SECTION 30 of the original draft contained the modern rule pertaining to the force of arbitral awards. This rule is not indeed contested to-day. Nevertheless, in view of its importance, it is proper to recognize it expressly.

6. SECTION 7 of the original draft drew a distinction between grounds for urging incapacity and grounds for challenging, and enumerated both. The Institute has stricken out the distinction and the enumeration. Article 4 is worded as follows:

Sovereigns and heads of Governments without any restriction shall be eligible to be named international arbitrators, and also all persons who have the capacity to exercise the functions of arbitrator under the common law of their country.

Nevertheless Article 5 draws a distinction, as did Section 8 of the original draft, between *incapacity* and *valid exception*. One of

two things should be done: either this distinction should not appear in Article 5, or the original draft should be restored, with the additional clause concerning sovereigns, etc. Although he was alone in his opinion during the first deliberation, the reporter persists in his recommendation of a detailed enumeration of the grounds on which incapacity may be urged and exception taken. Very few national laws contain clear, adequate, and undisputed provisions on this subject. In nearly all countries the doctrine and practice are uncertain.

On this subject especially there should be common and unequivocal rules; otherwise the very institution of the arbitral tribunal would be shaken from the start. In the matter of the present draft, the question as to what national law shall determine the capacity of each arbitrator will present itself at the very outset and will furnish plenty of material for sharp practice and for delays of every kind.

7. The principal change made in the original draft (Sections 32-34) is contained in Article 24. Paragraph 2 of this article has taken the place of Sections 32 and 34, which governed appeal. By virtue of this paragraph, it is the *compromis* that decides. It may be granted unreservedly that many practical objections can be raised to the radical and considerable innovation in the original draft. Nevertheless, it is to be regretted that this attempt to raise the international arbitral tribunal to the level of a truly legal institution has been absolutely discarded. See the *grounds* [for appeal from the award] in Sections 32-34, and the *Preliminary Remarks*. It may be also that this reference to the *possible* content of the *compromis* is not entirely in place in subsidiary regulations. This *possible* content can not be required. If the *compromis* contains nothing on this subject, we must fall back to the former state of things; that is to say, every State will consider itself bound only to the extent that it desires, for there will seldom be any lack of pretexts for contending that the award is ineffective.

The first paragraph of Article 24 lends itself also to criticism. The vague and general categories of a "*null compromis*" and of "*excess of power*" are there substituted for the grounds for appeal specified in Section 31 of the original draft. That would be appropriate in a national law, possessing a definite historical

foundation, an unchanging theory and practice. But these categories can not suffice in the domain of international law, in which subsidiary sources of law and a determinative jurisprudence are absolutely wanting. Consider how uncertain French jurisprudence is in the matter of excess of power, in spite of the authority of the Court of Cassation.

The last categories ("*corruption*," "*error*") appear to be too limited. The proved corruption of an arbitrator should be sufficient, even though it has not influenced the majority. An error should be sufficient also, even though it is caused by false witnesses.

It is desirable that this important article be made the subject of further examination.

MR. PAUL FAUCHILLE'S PROJECT OF A CONVENTION RESPECTING AERIAL LAW ¹

PART I.—AIRCRAFT IN TIME OF PEACE

CHAPTER I.—*Aircraft*

ARTICLE 1. Aircraft are public and private. Public aircraft are military or civil.

Military aircraft are those assigned by the State to military service and placed under the command of an army or navy officer in uniform. Every military aircraft must bear the distinctive sign of its character, attached in a visible manner to its covering.

Civil public aircraft are those which are assigned to civil service of the State and which are under the orders of a duly commissioned official. They shall carry the sign of their character in a prominent place.

ARTICLE 2. Every aircraft must have a nationality. The nationality of public aircraft is that of the State to the service of which they are assigned. That of private aircraft is determined by the nationality of their owner.

¹ *Annuaire*, vol. 24, p. 105. For the regulations adopted by the Institute, see *ante*, p. 171.

ARTICLE 3. Every aircraft must be registered on a list drawn up by the public authority of the State to which it belongs or of the country where its owner resides.

The registration shall show the name and kind of the aircraft, and the name and address of its owner.

The legislation of each State determines the places where registration should be made and the authority which is charged therewith.

The different States shall exchange the lists of the aircraft that have been enrolled.

ARTICLE 4. Every aircraft should have, fastened to its car, a plate of identification mentioning the name and residence of the owner, the name of the builder and its factory number.

It shall also bear upon its covering, plainly marked, (1) a letter corresponding to the country where it has been enrolled, (2) a letter corresponding to the district where it has been registered, (3) a number reproducing the enrolment number on the list.

If an aircraft has not the nationality of the country where it has been enrolled, it shall also carry the letter of the country of its nationality.

The national flag will indicate the public character of aircraft. In the case of military aircraft this flag will take the shape of a pennant.

CHAPTER II.—*The Circulation of Aircraft*

ARTICLE 5. In order to be admitted to circulate, every private aircraft should have a circulation permit showing its nationality and the essential characteristics of the apparatus.

In every State domestic regulations shall determine the conditions upon which the permit for aerial circulation shall be delivered, after a test of navigability.

The permit delivered in one of the contracting States shall be valid in the other States.

At all times the competent authorities shall have the right to visit aircraft that are permitted to circulate. The circulation permit shall be withdrawn from aircraft that cease to fulfil the required conditions.

ARTICLE 6. Every pilot of a private aircraft should be furnished with a certificate delivered after examination by a competent authority.

There shall be special certificates for free balloons, for dirigible balloons and for flying machines.

The certificate delivered for one class of aircraft cannot serve for the operation of an apparatus belonging to another class. The different certificates may be delivered to the same pilot.

The conditions required to obtain the certificate of proficiency should be at least the following: (1) that the age be over 18 years; (2) good sight; (3) that the applicant has not been convicted of crime or misdemeanor.

The certificates delivered in one of the contracting countries have full force and effect in the other countries.

An alien, as well as a national, may obtain the certificate of proficiency.

ARTICLE 7. Aerial circulation is free. Nevertheless the underlying States retain the rights necessary for their self-preservation, that is, for their own security and that of the persons and property of their inhabitants.

ARTICLE 8. To safeguard their right of self-preservation, States may close certain regions of the atmosphere to circulation. They especially have the right to forbid circulation above or in the vicinity of fortified works.

The parts of territory above which circulation is prohibited shall be marked off by signs visible to aeronauts.

ARTICLE 9. The circulation of aircraft is entirely free above the open sea and unoccupied territory.

ARTICLE 10. Military and police aircraft can only pass the frontiers of their country with the authorization of the State above which they wish to circulate or in whose territory they propose to land.

ARTICLE 11. In international circulation it is forbidden to transport, on private aircraft, explosives, arms and munitions of war. The same prohibition applies in principle to apparatus for photography or radio-telegraphy; this prohibition may be removed by the administrative authorities of the territory above which the aircraft circulate.

ARTICLE 12. Aircraft are likewise forbidden to carry merchandise that is prohibited or subject to monopoly, or even, within certain limits to be determined, merchandise liable to high customs duties in small bulk.

ARTICLE 13. Acts committed on public and private aircraft in whatever part of the air they may be are cognizable by the courts of the State to which the aircraft belong and are judged according to the laws of that State.

Nevertheless, acts affecting the right of self-preservation of the subjacent State or causing damage to its territory or the goods or persons of its inhabitants should be judged by the courts and according to the laws of the territorial State.

ARTICLE 14. In case of a collision between aircraft of the same nationality in any part of the atmosphere, the courts and laws that are competent to consider and fix their respective responsibility are those of the country of these aircraft to the exclusion of those of the subjacent State. When the two aircraft are of different nationality, in order to decide which of the two national legislations is applicable, the same rules shall be followed as in the case of collision on the high sea of two vessels of different nationality.

ARTICLE 15. International regulations, annexed to the present convention, which shall come into effect at the same time as the convention and remain in force until it has been modified by common agreement, shall fix the particular prescriptions with the view of preventing collisions and facilitating communication between aircraft. In making these prescriptions the practice followed in maritime navigation shall be the guide.

CHAPTER III.—*The Departure and Landing of Aircraft*

ARTICLE 16. Every private aircraft should have on board and produce whenever requested: (1) the circulation permit; (2) the proficiency certificate of the pilot; (3) if it carries merchandise, a manifest in accordance with the following article; (4) a log-book in which are recorded the names of the pilot and crew, the names, vocations and domiciles of the passengers, and the interesting events of the voyage.

The log-book alone is required of public aircraft.

ARTICLE 17. No formality is imposed upon aircraft that depart without merchandise.

On the other hand, aircraft laden with merchandise must carry a manifest prepared at the place of lading and viséed by the competent fiscal authority.

The police and agents of the treasury shall in all cases have the right of visiting aircraft at the time of their departure.

ARTICLE 18. Every aircraft, when it intends to land, shall display a special signal, described in the regulations annexed to the convention.

ARTICLE 19. Any State may forbid the landing of aircraft in certain parts of its territory, marked off by signs visible to aeronauts.

Aircraft transporting merchandise can land only at designated points.

ARTICLE 20. States have the right to forbid the landing upon their territory of aircraft coming from a country where disease exists, on the same conditions as for land vehicles and ships.

ARTICLE 21. Immediately after the landing of an aircraft the pilot should give notice thereof to the authorities of the nearest place. The latter, after verification of the identity of the aircraft, examination of the cargo and fulfilment of the formalities prescribed by the revenue laws, shall place their visé on the log-book. An aircraft carrying merchandise must produce its manifest. The personnel on board should conform to the provisions of the customs laws of the country where they land.

ARTICLE 22. Aircraft landing on foreign soil and intended to be taken out of the country shall have the benefit, as well as their equipment, of the system of release on bond or on a deposit of the duties.

ARTICLE 23. Aircraft and their equipment are provided, in the country to which they belong, by the customs service and for the case of indirect imposts according to the nature of the articles, with an identifying indelible ink stamp or seal; and thus stamped and sealed they shall be readmitted freely on returning to their country. The objects not marked shall alone be subject to the payment of customs duties.

ARTICLE 24. Acts performed on board a private aircraft while it is in contact with the soil of a foreign State come within the jurisdiction of the courts of that State and are judged by the laws thereof, except in the case of mere infractions of the discipline and professional duties of the aeronaut; such acts performed on board of a public aircraft are on the contrary removed in principle from the jurisdiction and legislation of the territorial State.

ARTICLE 25. Public aircraft in a foreign country have a right to the privileges of extritoriality.

ARTICLE 26. The authorities of the contracting States should, in case of landing or of distress of an aircraft, lend it aid and protection; they should instruct the population as to the necessary measures in such cases.

ARTICLE 27. Whoever finds, on land or at sea, an aerial wreck should make a declaration thereof to the municipal authority of the neighboring place or of the first port he enters, within twenty-four hours of finding it or of entering the port.

The wreck, if it can be identified, shall be restored to its owner, who shall reimburse the salvor and pay him a remuneration of five per cent of the value of the wreck. Otherwise it shall remain in the hands of the authorities; the domestic legislation of each State determines the time during which the owner of the wreck can effectually claim it.

ARTICLE 28. On the request of the interested parties assistance should be given, so far as possible, to an aircraft in the air, on land or at sea. Whoever gives assistance should receive reimbursement of his expenses and a suitable remuneration.

PART II.—WAR¹

CHAPTER I.—*The Theatre of Aerial War*

ARTICLE 1. Belligerent States have the right to carry out warlike acts in any and every part of the atmosphere above their

¹ For this translation of Part II we are indebted to Mr. J. M. Spaight's *Aircraft in War* (London, 1914), p. 123.

several territories, above the open sea, and above the sea bounding their coasts.

They are forbidden to carry out hostile acts, capable of causing the fall of projectiles or of causing damage generally, above the territories of neutral States, at whatever height, and also in the neighbourhood of these States within a radius determined by the force of the cannon of their aircraft.

A belligerent's military aircraft, and also his public non-military aircraft, may not circulate above a neutral State except with the latter's authority. But both public and private aircraft are forbidden to remain above a neutral country within a certain radius of the other belligerent's frontier. The circulation of aircraft in war time is subject to the same restrictions as during peace.

CHAPTER II.—*The Relations of Belligerents "Inter Se"*

ARTICLE 2. Privateering is forbidden in aerial as in maritime war.

Belligerents may, however, incorporate in their military forces, private aircraft and their crews, on condition that they are placed under the control of a duly commissioned officer and carry a distinctive, external sign of their character.

ARTICLE 3. The conversion of private aircraft into military aircraft may be made during war in the territory or in the territorial waters of the State to which they belong, in the territory occupied by the troops of that State, in the open sea, and in the atmosphere not situated above a neutral State, under the conditions laid down in the Hague Convention of October 18, 1907, relative to the conversion of merchant ships into war-ships.

The converted aircraft will preserve their military character during the whole period of hostilities and cannot be reconverted into private aircraft during that period.

ARTICLE 4. The terms of the first section, Chapter II, and of the second section, Chapters I and III, of the Hague Regulations of October 18, 1907, concerning the laws and customs of war on land, besides those expressly laid down in the following articles, will apply, as far as possible, to aerial war.

ARTICLE 5. In accordance with the second and third Declara-

tions of The Hague of July 29, 1899, the discharge from aircraft of projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases, or of bullets which expand or flatten easily in the human body, is forbidden.

ARTICLE 6. The bombardment by aircraft of towns, villages, habitations or buildings which are not defended is forbidden.

The rules established by the Hague Conventions of October 18, 1907, relative to sieges and bombardments by land or naval forces, are applicable to aerial war.

ARTICLE 7. Aircraft can only be considered suspected of espionage if, acting clandestinely or under false pretences and thus dissimulating their operations, they obtain, or seek to obtain, information, above the territory or territorial waters of a belligerent, or above territory occupied by his troops, or, in the open sea, above one of his squadrons or ships of war, and, generally, in the zone of his operations, with the intention of communicating it to the hostile party.

It is consequently a principle that soldiers, not in disguise, employed on scouting duty in aircraft, and individuals dispatched in aircraft to carry despatches and in general to maintain communication between the various parts of an army or of a territory, are not considered spies.

ARTICLE 8. The public aircraft of a belligerent State, though not appertaining to the military service, are liable to seizure and confiscation.

ARTICLE 9. The private aircraft of the enemy may be seized by a belligerent above his own or the enemy's territory or territorial waters, and above the open sea, but they must be restored at the peace without indemnity. Any merchandise, even belonging to the enemy, found on board such aircraft, is not seizable.

The foregoing dispositions do not modify the right of confiscation which a belligerent possesses in virtue of the rules relating to blockade and contraband of war, and generally, in the case of private enemy aircraft performing hostile acts or being employed in a military task.

ARTICLE 10. The validity or nullity of the acquisition of neutral nationality by enemy aircraft is, in accordance with the dispositions of Chapter V of the Declaration of London of February

26, 1909, dependent on the moment at which the transfer has been effected and the conditions on which it has been carried out.

ARTICLE 11. The fact whether an air-ship or aeroplane is enemy or neutral is shown by the distinctive sign of its nationality, which it has the right to carry.

ARTICLE 12. When private enemy aircraft or public non-military enemy aircraft are seized by a belligerent, the captain and crew, whether subjects of the enemy State or of a neutral State, are not made prisoners of war, but must be left at liberty under the conditions provided for in Chapter III of the Hague Convention of October 18, 1907, relative to certain restrictions upon the exercise of the right of capture in maritime war.

ARTICLE 13. The destruction of private enemy aircraft or of public enemy aircraft is only permissible under the exceptional circumstances of the aircraft's acting as, in fact, military aircraft, or resisting the legitimate exercise of the right of capture; and the destruction cannot be carried out until after a special summons has been made.

ARTICLE 14. Belligerents possess the right to capture enemy aircraft, private or public, descending on their territory whether by accident or forced descent.

ARTICLE 15. The private aircraft of a belligerent which happen to be within the enemy's territory at the outbreak of hostilities, and aircraft which quitted their last port of departure before the commencement of hostilities and arrived within hostile territory without knowing of the existence of hostilities, can only be seized under the conditions named in Article 9 if no "days of grace" have been granted for their departure, or if, such "days of grace" having been granted, advantage has not been taken thereof. "Days of grace" cannot be granted to private enemy aircraft the construction of which shows that they are intended to be transformed into war aircraft.

Private enemy aircraft which quitted their last port of departure before the commencement of hostilities and are encountered, in space, ignorant of the existence of hostilities, may be seized like all other private enemy aircraft.

Public non-military aircraft may receive the benefit of the "days of grace" in the same circumstances as private aircraft.

ARTICLE 16. Aircraft charged with scientific or philanthropic missions are exempt from seizure, under the conditions named in Chapters I and II of the Hague Convention of October 18, 1907, relative to certain restrictions on the exercise of the right of capture in maritime war.

ARTICLE 17. As regards the treatment of sick and wounded, the provisions of the Hague Convention of October 18, 1907, for adaptation of the principles of the Geneva Convention to maritime war, are applicable also to aerial war, so far as possible.

The wounded and sick soldiers of a belligerent deposited by aircraft upon a neutral State's territory with the consent of the local authorities, must, in default of an arrangement to the contrary between the neutral and the belligerents, be guarded by the neutral State so as to prevent their taking part again in the operations of the war. The expenses of maintaining them in hospital and of interning them will be borne by the State to which the wounded and sick belong.

ARTICLE 18. An army which invades or occupies a hostile territory may seize aircraft of enemy nationality, even if belonging to private persons; but, in this latter case, the aircraft must be restored and indemnities for them regulated at the peace, in conformity with Article 53 of the Hague Regulations of October 18, 1907, on the laws and customs of war on land.

CHAPTER III.—*The Relations of Neutrals and Belligerents*

ARTICLE 19. The military aircraft of the belligerents which enter neutral territory must not remain there more than twenty-four hours, unless prevented by damages or the state of the atmosphere.

If aircraft of the two belligerent parties happen to be simultaneously at the same place in this territory, at least twenty-four hours must be allowed to elapse between the departure of the aircraft of the one belligerent and the aircraft of the other. The order of their departure is determined by the order of their arrival, unless, in the case of the aircraft arriving first, there is an admissible reason for prolonging the stay.

Belligerent aircraft must not do anything within neutral ter-

ritory which might augment their military power, and their presence must not in any way prejudice the interests of the neutral State; the only acts which they may perform are those which humanity cannot forbid and which are indispensable for enabling them to reach the nearest point in their own country or in a country allied to them during the war.

The principles of the Hague Convention of October 18, 1907, relating to neutral rights and duties in maritime war, are generally applicable to aerial war.

ARTICLE 20. The aerial navigation of neutral countries is prohibited in all parts of the atmosphere dominating the territory of the belligerent States, as well as within a radius of 11,000 meters from their frontier.

Except in the case of *force majeure*, aircraft disobeying this prohibition will be confiscated if espionage is not proved against them.

ARTICLE 21. In case of a blockade with an effective area of more than 11,000 meters, neutral aircraft may not approach any point in this area, even if more than 11,000 meters from the enemy's frontier.

Neutral aircraft in a blockaded port may not leave it.

The rules formulated by the Declaration of London of February 26, 1909, as to blockade, are applicable in aerial as in maritime war.

ARTICLE 22. Articles constituting contraband of war may be confiscated on board neutral aircraft as well as on board enemy aircraft.

ARTICLE 23. As regards the determination of articles constituting contraband of war and the conditions in which they may be seized, the rules laid down in the Declaration of London of February 26, 1909, Chapter II, shall be followed.

ARTICLE 24. Among the articles of "conditional contraband" which may be declared confiscable if destined for the use of the armed forces or of a Government department of the enemy, the following may be classed, viz., aircraft, their distinctive component parts and accessories, articles and materials of the special character of aircraft stores.

ARTICLE 25. The provisions of Chapter III of the Declaration

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of London of February 26, 1909, relative to unneutral service at sea, shall be applicable to neutral aircraft.

There is a presumption of unneutral service, justifying capture, against neutral aircraft circulating above belligerent States.

ARTICLE 26. Neutral aircraft may be destroyed under the same conditions as belligerent aircraft.

ARTICLE 27. Neutral aircraft descending in belligerent territory, owing to accident or "forced descent," may be seized and confiscated in the cases and subject to the conditions specified in the preceding articles.

ARTICLE 28. The subjects of a neutral State shall be treated like those of the belligerent States as regards aircraft belonging to them in the territories of the belligerents.

CHAPTER IV.—*Aerial Prizes*

ARTICLE 29. The adjudication of aerial prizes is subject to the same rules as the adjudication of maritime prizes.

ARTICLE 30. If the seizure of an aircraft or its cargo has not been upheld by the prize courts, or, if, without the matter being brought before the courts, the seizure has not been maintained, the parties interested have a claim to damages, unless there has been sufficient justification for the seizure of aircraft and cargo.

In the case of destruction of an aircraft, unless the captor can show that he acted in the circumstances referred to in Article 13, he is bound to indemnify the persons interested, and it is not necessary to inquire whether the seizure was valid or not.

PART III.—CAPTIVE AIRCRAFT AND UNMANNED FREE AIRCRAFT

CHAPTER I.—*Captive Aircraft*

ARTICLE 1. Captive aircraft having in general the nationality of the sovereign, legitimate or actual, of the territory to which they are attached are, in time of peace as well as in time of war, placed under the laws and jurisdiction of that territory.

In exceptional cases where they have a different nationality, they should be subject to the following rules:

1. On land, private aircraft are governed by the laws and jurisdiction of the country below them, except for acts constituting mere infractions of discipline or professional duty of the aeronaut; public aircraft are, on the contrary, subject to the authority of the government to which they belong, unless their commander has delivered the delinquents to the local authorities or asked their intervention, or the affair touches the security or well-being of the territorial State.

2. The acts performed in the car of a captive aircraft above the open sea or territorial waters of a State fall within the jurisdiction of the courts and laws of the country of the aircraft or of that of the vessel to which it is attached according as the aircraft is public or private, without regard to the public or private character of the vessel.

ARTICLE 2. In time of peace, captive aircraft that are not national military aircraft cannot without authorization in writing from the military authority be installed within 10,000 meters of fortified works.

No captive aircraft, private or public, can be located within 10,000 meters of the fortified works of neighboring States without permission in writing from those States.

In time of war, captive aircraft of neutrals cannot be located on their own territory within 10,000 meters of the frontier of the belligerent States. But the captive aircraft of the belligerents have the right to operate over their territory up to the very boundary of the neutral States. Belligerent captive aircraft cannot be installed on or even pass over the territory of a neutral country.

ARTICLE 3. Captive aircraft that get loose shall be treated as free aircraft.

CHAPTER II.—*Unmanned Free Aircraft*

ARTICLE 4. Unmanned free aircraft which, under the name of sounding balloons, have an exclusively scientific purpose may in time of war as well as in time of peace freely circulate in all parts of the atmosphere.

These aircraft have, attached to their car, a plate giving their

name, their domicile and the name and address of their owner; they bear on a certain place on their covering a flag of a particular shape indicating their nationality.

Every State must see to it that its inhabitants respect the sounding balloons that ground on its territory or are found at sea, and that they answer the list of questions found in the car and send them back promptly to the writer; customs formalities shall be simplified as far as possible with regard to such aircraft.

It is desirable that the States form an international union whose bureau, established at ——— (Strassburg), shall be charged with regulating the use and status of sounding balloons and with centralizing the information collected.

ARTICLE 5. Unmanned free aircraft of which one of the belligerents makes use in time of war for the conduct of its operations may be fired upon by the other in those parts of the atmosphere where acts of hostility are authorized.

But if these aircraft escape the fire of the belligerent troops, neutral States above which they pass have no right to touch them at any height whatever.

In case aircraft of this kind fall upon the territory of a neutral State or are found at sea by a subject of a neutral State, the authorities of that State should keep them until peace, together with the dispatches and carrier pigeons found upon them.

CODE ON AIRCRAFT IN WAR PROPOSED BY MR. VON BAR ¹

ARTICLE 1. In general it is forbidden to make use of air-ships, balloons or aeroplanes as means of destruction or of combat.

ARTICLE 2. Nevertheless (a) enemy military air-ships, balloons or aeroplanes, if fired upon from the land or from shipboard, may defend themselves;

(b) Combats in the air are permitted:

(1) If there is a naval engagement and the air-ships, balloons

¹ *Annuaire*, vol. 24, p. 132. See *ante*, p. 171.

or aeroplanes are not distant more than twenty kilometers from the place of engagement;

(2) In the territorial waters of belligerents within a zone of blockade;

(3) In the aerial space above the territory of the belligerents.

ARTICLE 3. It is forbidden to capture in the air enemy private air-ships, etc., except when they voluntarily enter the aerial space above the territory of the adversary or in a zone of blockade or in case of contraband under Article 4.

ARTICLE 4. Likewise it is forbidden to seize and confiscate neutral air-ships or their cargoes as contraband, except when they are bringing aid directly to a blockaded coast or port or to the enemy army or fleet in the theater of war.

ARTICLE 5. In the cases excepted by Articles 4 and 5 the rules for maritime prizes shall be applied.

ARTICLE 6. It is forbidden enemy private air-ships to penetrate into the aerial space of the adversary State.

ARTICLE 7. Belligerents *may* forbid neutral air-ships to enter the aerial space above their territory.

ARTICLE 8. It is forbidden to fire upon neutral air-ships without previous warning and to fire upon them if they happen to be forced to land.

REGULATIONS GOVERNING THE RELATIONS BETWEEN THE CARNEGIE ENDOWMENT AND THE INSTI- TUTE OF INTERNATIONAL LAW ¹

ARTICLE 1. The Institute of International Law, confirming its resolution adopted at Christiania, under date of August 26, 1912, accepts the duties of general adviser to the Division of International Law of the Carnegie Endowment. In consequence of this acceptance, it appoints a special Consultative Committee to which it delegates the performance of the said duties, under the conditions stated below.

¹ Adopted by the Institute August 8, 1913. *Annuaire*, vol. 26, p. 682.

ARTICLE 2. The Consultative Committee for the Carnegie Endowment shall consist of nine members, together with the president of the Institute *ex officio*, and the secretary general of the Institute, who shall act as president of the Committee.

ARTICLE 3. Of the nine members first elected one-third shall retire from office at the end of two sessions, one-third at the end of four sessions, and the remaining one-third at the end of six sessions, the order of their retirement to be determined by the drawing of lots immediately after the initial election, and the Institute shall proceed to fill their places. They shall not be eligible for immediate reelection. Members elected at any session after the first shall serve for two sessions and shall not be eligible for immediate reelection. If for any reason a member should retire before the expiration of his term, the Committee shall, at the next following session, proceed to fill his place for the remainder of his term.

ARTICLE 4. Meetings of the Committee shall be called by the president upon request of the Director of the Division of International Law of the Carnegie Endowment.

Its resolutions shall be adopted by an absolute majority of the members present, the quorum necessary to render the deliberations valid being six members.

The Committee may ask the Director to be present at a meeting to explain matters relating to questions on the program; for his part, the Director may request permission to be present at the meetings of the Committee.

ARTICLE 5. The Committee may be consulted upon all questions pertaining to international law, which are of a nature to contribute to its theoretical and practical development, as well as to its strict observance. In this connection, it may make such suggestions as it shall consider expedient to the Executive Committee of the Carnegie Endowment.

ARTICLE 6. Depending upon the case, the Committee shall give its opinion directly to the Carnegie Endowment or shall decide whether there is occasion to consult the Institute, either in plenary session or in administrative session.

ARTICLE 7. The President of the Committee shall communicate the resolutions adopted by it to the Carnegie Endowment through the Director of the Division of International Law. At

each session the secretary general shall give an account of them in his report to the Institute.

If, at the request of the Committee, a question has been referred to the Institute, the secretary general shall communicate the resolution adopted to the Carnegie Endowment.

ARTICLE 8. The expenses incurred by the meetings of the Committee, including the traveling and hotel expenses of the members, shall be borne by the Institute.

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